THE LEGISLATIVE REFORM (INSOLVENCY) (MISCELLANEOUS PROVISIONS) 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) (Miscellaneous Provisions) 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 miscellaneous provisions of the Insolvency Act 1986 ("the Act") in order to reduce burdens on users of the legislation, thereby benefiting the creditors of insolvent companies, the members of solvent companies, and individuals through increased dividends.

THE DUTIES OF THE MINISTER

3. 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 documents before publication. Following the consultation period the Minister considered that, in light of the responses, the proposals should proceed subject to the amendments highlighted in paragraphs 73 to 78.

4. 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

5. The Minister recommends that the draft Order and the Explanatory Document be laid in Parliament under the super-affirmative resolution procedure, for which provision is made by section 18 of the LRRA.

6. In making his recommendation, the Minister considers the following factors to be relevant: the provisions in the draft Order relate to matters of insolvency law; insolvency law is and is perceived to be a complex and technical area of law; it is studied and practised by a small number of specialists; the provisions generally relate to technical areas of the law within that wider background of insolvency law; owing to the prevailing economic conditions, insolvency matters are currently of wider public interest; some of the provisions affect the property of insolvent companies and individuals; and some of the provisions affect the rights of creditors.

7. Therefore, although he does not consider the provisions to be controversial, in that they were widely welcomed by consultees, or of wider public or political importance, he does consider that the super-affirmative

procedure will provide opportunities for a degree of Parliamentary scrutiny which is not available under the affirmative resolution.

GENERAL BACKGROUND

8. The provisions contained in the draft Order are one part of a substantial project to modernise insolvency law with the aim of reducing costs and administrative burdens and increasing dividends to creditors and to enable them otherwise to benefit from more flexible procedures.

9. The main legislation governing insolvency proceedings in England and Wales is contained within the Insolvency Act 1986 ("the Act") and the Insolvency Rules 1986 (S.I. 1986/1925) ("the Rules"). The Act provides for various insolvency procedures and the Rules provide the fine detail of the insolvency procedures themselves and for their practice and procedure and other ancillary matters. For a more detailed introduction to insolvency procedures and to the relationship between the Act and the Rules please see Annex N.

10. The insolvency legislation provides for the fact that there will inevitably be costs and expenses incurred in the course of administering insolvency procedures and those have to be paid according to an order of priority set out in the Rules, before money can be paid to the creditors. This means that before any creditor can receive a dividend, these priority costs must first be met in full. If these costs can be reduced then the "pot" of money available to distribute to the creditors will increase accordingly. This might in some cases make the difference between the payment, or not, of a dividend or in other cases increase the amount of the dividend.

11. The aims of the modernisation can be achieved in three ways—
    - achieving consistency by reducing burdens which appear in both the Act and the Rules;
    - reducing burdens which appear only on the face of the Act;
    - reducing burdens which appear only in the Rules

12. The amendments put forward in the draft Order arose from two distinct pieces of work: a review of the Rules (which in turn led to the proposals explained in Annexes A,B,C,D,E and G) and a review of the working of Individual Voluntary Arrangements (which led to the proposal explained in Annex F).

13. The reviews have included extensive consultation with users of the insolvency legislation, particularly members of the insolvency and legal professions, but additionally many other stakeholders, including groups representing creditors.

Achieving consistency by reducing burdens which appear in both the Act and the Rules

14. There is in progress a substantial project to modernise and consolidate the Rules. This project was initiated in 2005.

15. Since their inception in 1986, the Rules have been substantially amended, almost on an annual basis. This project aims to do two things: one is to restate the Rules in a clearer more user-friendly manner; and the other is to modernise them in such a way as to reduce the cost of proceedings such that the savings are applied to creditors in the form of increased dividends. As a significant simplification project, this supports the government's aim of reducing burdens on users of the insolvency legislation. These modernising amendments are planned to come into force on 6 April 2010.

16. The large majority of the changes in the Rules can be effected without reference to changes in primary legislation, as the things to be changed are themselves creatures of the Rules.

17. Chief amongst these modernisation changes to the Rules is to—
    - reduce the cost of printing and posting of documents, some of which are bulky and seldom read but which are expensive to print and, in particular, post to multiple recipients. This is to be achieved by allowing the use of e-mail and websites.
    - reduce the number of documents which need to be sworn as affidavits. This can be achieved by allowing for a statement of truth instead.

18. However, there are a few occasions where the Act itself prescribes things to be posted or affidavits to be sworn etc. If these provisions are not changed, there will effectively be a two-tier procedure which will place an administrative burden on the insolvency office-holder in that he will need to have systems in place to identify for example which documents can only be posted in hard copy or which documents must be sworn as affidavits. Furthermore, these provisions in the Act attract their own rules which would be out of keeping with the wider body of the Rules.

Deregulatory amendments independent of the Rules

19. The Act was the product of the report of the Cork Committee which was set up in 1977 to review the law and practice relating to insolvency, to examine the possibility of harmonising and integrating the existing procedures, to suggest less formal alternatives to bankruptcy and liquidation and to make recommendations.

20. One of the key changes made by the Act was that for the first time Insolvency Practitioners ("IPs"), who take appointment as statutory office-holders and thereby administer insolvency cases, were required to be licensed. The licensing bodies working together have also put in place a regime to monitor the performance and actions of IPs by means of compliance visits. Non-compliance can result in sanctions ranging from

removal of authorisation to restrictions on a practice to a type of probation. The system of licensing is now well embedded in the insolvency regime.

21. The amendments we are putting forward within the draft Order retain all necessary requirements to keep creditors informed of the conduct of insolvency procedures but recognise that there are some matters that can be left to the professional judgement of the IP. They also recognise that some processes are either outdated, or with amendment could be made to operate more effectively in the interests of the general body of creditors.

22. We also consider that some actions presently required of IPs are unnecessarily burdensome. Lifting those burdens would reduce the costs of administering insolvency procedures, bringing benefits to creditors as a whole.

23. IPs' procedures will be most affected. We consider that there will also be benefits for them from being able to use more streamlined procedures as the result of the removal of or reduction in burdensome requirements. Creditors and shareholders (in the case of companies) will be the beneficiaries of the reduction in the costs of the conduct of insolvency proceedings and will gain from changes in the way insolvency proceedings are conducted, with the proposed introduction of greater flexibility in some key areas.

Reducing burdens which appear only in the Rules

24. This is not relevant for present purposes and therefore it is not intended to deal with this here.

SUMMARY OF PROPOSALS

25. The draft Order seeks to make amendments in relation to 7 different proposals—
    - remote attendance at meetings
    - use of websites as a means of communication
    - reference to things "in writing" and "post"
    - removal of the requirement for documents to be verified by affidavit in England and Wales
    - removal of requirement for certain annual meetings
    - removal of requirement for certain documents to be filed in court in individual voluntary arrangements
    - removal of requirement for sanction for certain acts of the office holder

26. The aim of the proposals in respect of attendance at meetings, websites and references to "writing" and "post" is to modernise and make more flexible the means of communication and the exchange of information between office-holders and creditors (and others who send or receive information) in insolvency cases. They also aim to 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.

27. The remaining 4 are stand alone proposals. One of those proposals, i.e. that relating to requirements for sanction, aims to recognise that some decisions are best left to the professional judgement of office-holders who are experienced members of a regulated profession, as well as removing unnecessary burdens on IPs and others, whilst not removing any necessary protections for creditors.

28. All the proposals reduce burdens on the face of the Act.

29. The proposals relating to attendance at meetings and websites also facilitate the reduction of burdens appearing only in the Rules.

30. The proposals concerning references to things in writing, affidavits and certain annual meetings allow for harmony between the Act and the Rules.

31. The proposals relating to sanction and reports in individual voluntary arrangements only reduce burdens on the face of the Act.

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

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

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

35. So far as the creditors themselves are concerned, there are broadly three categories and a legal order of priority of payment i.e. secured, preferential and then unsecured. For the avoidance of doubt when considering these

proposals, it should be borne in mind that the only preferential creditors are claims in respect of employees and that unpaid taxes can no longer be claimed preferentially. All unsecured creditors (which includes trade creditors) are treated equally amongst themselves.

36. These proposed changes will therefore benefit individuals and businesses by increasing the amount paid to them as creditors and will lessen the bad debts they will suffer, which will therefore aid the economy in general. Creditors will also be able to receive information concerning the progress of an insolvency case electronically or by other means if that would suit their needs.

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

THE PROPOSALS

Attendance at meetings

38. Both the Act and the Rules require various meetings to be held from time to time as part of the conduct of insolvency proceedings. This proposal aims to provide greater flexibility in relation to such meetings by permitting those attending to do so other than by physical attendance or by proxy, as is the case now.

39. The draft Order inserts new sections into the Act allowing a meeting to be conducted in such a way that those attending it do not have to be present in the same place as long as they can all exercise their rights to speak and vote at the meeting through the use of appropriate communications technology. It is anticipated that such meetings could be held via telephone and video conferencing or even online. Whilst it is true that the existing provisions enable creditors/members to attend by proxy, this is fairly inflexible in that the creditor must have made up his mind how to vote in advance and cannot personally form a view and respond to, say, suggested modifications to proposals for a voluntary arrangement or other matters discussed at the meeting.

40. This proposal allows creditors to fully participate in the insolvency process in circumstances where they may not have been previously able to do so due to time, location and cost restraints.

Use of Websites

41. The Act requires office-holders to send information at various stages of an insolvency process, which can sometimes include lengthy reports. The

costs of printing hard copies of such information, to all known creditors, can be substantial and is borne by the estate.

42. The proposal is that the office-holder in insolvency proceedings should be permitted to use a website for the communication of information and sending of documents. Creditors/members would be sent a link via an email or by post providing details of the website and information required for viewing the particular document on the website.

43. The draft Order inserts new sections into the Act which expressly permit the office-holder to use a website for the communication of information and sending of documents. The detail as to how this is done will be set out in new Rules made under the Act. It is intended that the Rules will give the intended recipients of a document made available on a website a right to request a hard copy of it from the office-holder, free of charge.

References to "writing" and "post"

44. This proposal is a more minor and technical proposal which is part of the wider project to modernise the means of communication and the exchange of information in insolvency cases. The proposal supplements the proposed amendment of the Rules to allow the use of e-mail for the sending or supply of documents or information under the Act and the Rules.

45. Currently, electronic communication, particularly e-mail is not being used because there is doubt whether it is permissible where there is an express requirement for the communication to be "in writing". The doubt causes an administrative burden. The draft Order inserts a new section into the Act which states that references throughout the Act to a thing "in writing" include that thing in electronic form. The draft Order also amends sections 95 and 98 of the Act to remove references to notices being sent by "post".

Affidavits

46. The Act requires certain documents which are submitted in the course of insolvency proceedings in England and Wales to be sworn by affidavit.

47. The proposal is that this requirement should be removed and replaced with a less burdensome requirement for such documents to be verified by a statement of truth, which does not need to be sworn or affirmed and therefore removes the need for the involvement of a solicitor or Commissioner for Oaths.

48. Amending the Act in this way will make it consistent with the amendments to the Rules which aim to be consistent with the Civil Procedure Rules 1998, where affidavits in other areas of civil law have, with only a few exceptions, been replaced by witness statements verified by a statement of truth.

Annual Meetings

49. Currently sections 93 and 105 of the Act require the liquidator of a company in voluntary winding up in England and Wales to summon annual meetings of creditors and/or members for the purpose of laying an account of his acts and dealings and of the conduct of the winding up during the preceding year. However in practice this amounts to no more than laying before the meeting a copy of the liquidator's receipts and payments account for the preceding period. These meetings are rarely attended by creditors/members so the costs of summoning and holding them are incurred to little useful purpose.

50. The draft Order amends sections 93 and 105 of the Act so that they no longer apply in a winding up in England and Wales. This effectively removes the requirement for a liquidator in such a winding up to summon annual meetings. New insolvency Rules will be put in place to ensure creditors and/or members still receive the same information but in the form of a written progress report which will include a receipts and payments account.

To remove unnecessary requirements to report to court with respect to certain individual voluntary arrangements ("IVAs")

51. This proposal concerns the most frequently encountered IVA procedure. It will remove the obligation currently imposed by legislation on IPs and authorised persons to file reports routinely with the court in cases in which the court has, or has had, no role to play. The effect of this will be to remove an administrative and financial burden on those who administer such IVAs.

52. It will also contribute to the government's drive to reduce administrative burdens on HM Courts Service which is currently required to receive and store such reports.

Sanction

53. This proposal involves removing a requirement, imposed upon liquidators and trustees in bankruptcy in England and Wales, to obtain sanction for certain actions they propose to take as part of their conduct of the case.

54. Schedules 4 and 5 to the Act list various powers that a liquidator of a company or a trustee in bankruptcy may exercise in the course of the winding up or bankruptcy. Some of these actions are exercisable on the office-holder's own authority, whilst others require the prior consent of the liquidation or creditors' committee, the creditors or the court.

55. The draft Order amends Schedules 4 and 5 to remove the requirement 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

bankrupt. The Insolvency Service has received representations from the insolvency profession that the requirement to obtain sanction before compromising a debt due to the insolvent estate is particularly onerous and can result in a loss in value to the insolvent estate. IPs, as experienced members of a regulated profession are best placed to make this type of decision using their commercial judgement.

THE LEGISLATIVE AND REGULATORY REFORM ACT 2006 – PRE-CONDITIONS

56. 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, an administrative inconvenience, or an obstacle to efficiency, productivity or profitability.

57. As mentioned previously, the Minister considers that the proposals in the draft Order remove or reduce unnecessary burdens on insolvency practitioners, creditors and others by modernising, streamlining and making easier for users some processes in the insolvency legislation (this is expanded on under "Impact Assessment" below and in the full Impact Assessment at Annex H. This view was endorsed by the consultations.

58. The Minister considers that all the conditions in section 3(2) of the LRRA are satisfied for each of the proposals. This view was also endorsed by the consultations. The conditions are assessed in detail for each of the proposals in Annexes A – G.

IMPACT ASSESSMENT

59. The proposals are intended to reduce burdens on users of insolvency law so as to increase returns to creditors.

60. This is intended to be achieved, broadly, by two means. Firstly, to modernise and streamline insolvency procedures, by removing requirements which no longer serve any useful purpose, and to enable better use to be made of electronic communication in insolvency procedures. Most of the insolvency legislation dates back to at least 1986 (and much of it was brought forward from earlier Acts and Rules) and at present only specifically acknowledges the existence of electronic communication in relation to one type of insolvency procedure. Secondly, other proposals such as removing the requirement to obtain sanction to compromise the realisation of an asset or judging when to use a website or a meeting without a physical venue, aim to give more discretion to IPs in these limited areas of their work. The background to these proposals is that the licensing of IPs is now a well embedded principle and as such we consider that they, as professional individuals, are best placed to make

these decisions, at the same time as remaining answerable to creditors on any decisions taken.

61. The reduction in burdens will, we believe, provide substantial savings in the administration of insolvent estates, which will feed through in the form of increased payments to creditors or members of those insolvent estates.

62. The changes and estimated cost savings proposed are £7.8m as follows:

Proposal	Estimated savings £m
Allowing insolvency office-holders to hold meetings in such a way that those attending do not have to be present in the same place as long as they can all exercise their rights to speak and vote at the meeting through the use of appropriate communications technology. This will reduce costs and also make it easier for creditors to take an active part in the meeting without travelling to a physical venue.	0.4,
Enabling the use of websites for communications to creditors and others. This will reduce costs of printing and posting as well as aiding efficiency.	0.6
Making it explicit that communication can be effected electronically where the legislation requires it to be "in writing" and removing requirements for documents to be sent by "post" under sections 95 and 98 of the Act. This will reduce costs of printing and posting as well as aiding efficiency.	See footnote[1]
Replacing requirements for the swearing of affidavits with requirements for verification by means of a statement of truth. This will reduce costs and bring insolvency law in line with most other areas of the civil law.	0.1
Removing the requirement for liquidators to hold annual meetings. The information currently required to be laid at that meeting will instead be sent to the creditors/members.	5.2
Removing requirements for filing at court in some individual voluntary arrangements. This will mean that the IP's time in sending the information to the court need no longer being incurred.	0.3

[1] There will be associated changes to be made to the Rules, which together with other changes to the rules permitting things to be done in electronic form are estimated to result in savings to creditors of £20 million a year. This will be subject to a separate impact assessment.

Removing a requirement for liquidators and trustees in bankruptcy 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 bankrupt. This will reduce costs and enable decisions to be taken without delay and potential losses to the insolvent estate.	1.2m

63. A full impact assessment signed by the Minister is attached at Annex H.

CONSULTATIONS

64. The proposals in the draft Order were subject to consultation in accordance with section 13 of the LRRA. The proposals were in fact the subject of 3 consultations:

- "*A consultation on proposed changes to the Individual Voluntary Arrangement (IVA) regime contained in the Insolvency Act and other matters*". Only one of the proposals consulted on is being proceeded with, i.e. that relating to filing certain documents in court in IVAs. See paragraphs 32 to 36 of Annex F and Annex J.
- "*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."* The other six proposals in this LRO flow from this consultation.
- As a result of a decision not to proceed with one of the proposals in that consultation, it was decided that a modification would be needed to the proposal enabling the use of websites. The amended proposal was consulted upon for 6 weeks from 15 August 2008.

65. There were 11 proposals subject to the public consultation between 19th September and 10th December 2007 entitled "*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."* This consultation covered some changes that would need to be made by the Act and the Rules, as well as just by the Act. Five of those proposals are not being proceeded with here and they are set out in paragraphs 73 to 78. A full list of all those consulted is attached to the "Insolvency Service response to the consultation" at Annex I (which also shows who responded). The consultation document was previously sent to the Parliamentary Committees for information in June 2008.

66. The consultation sought views on the policy and proposals (including the burdens, costs and benefits) and the pre-conditions in section 3(2) of the LRRA that need to be satisfied.

67. 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 who takes appointments. We also held meetings with The Association of Business Recovery Professionals ('R3') (a body that speaks for nearly all licensed insolvency practitioners in the UK) , following the response that this organisation 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.

68. The overall response to the consultation was generally very positive with widespread support for the majority of the proposals. The consultation reinforced our view that the proposals would reduce burdens without removing any necessary protections. The proposals aimed at modernising and streamlining insolvency procedures, particularly those enabling the use of electronic communication (except for the opt-in initiative- see below), were particularly welcomed by the vast majority of respondees.

69. The only substantial objections made in respect of proposals in this draft Order were raised by R3 and HMRC. Following further discussion and correspondence with them as to the reasoning for the relevant proposals, alongside a decision not to continue with the proposal relating to "opt in" for creditors, their respective concerns were withdrawn.

70. As a result of the decision not to pursue the opt-in proposal, it was decided that a modification would be needed to the proposal enabling the use of websites. The modified proposal was no longer to be linked to the creditor giving his consent, rather all known creditors would receive notification that the information had been posted on a website. To canvass views on this modification, on 15th August 2008 a further consultation was issued in relation to this issue alone. The removal of the need to obtain consent was intended to increase the opportunities to reduce costs as it removes the risk that costs will be incurred through creditor apathy rather than an express desire not to receive information through a website. Safeguards will remain as intended recipients will be sent a notice regarding the availability of the document in question on the website and will have the right to request a hard copy of it, free of charge, from the office-holder.

71. The further consultation was open for a period of 6 weeks and was sent to all those whom were originally consulted, as well as any other interested parties who responded to the first consultation. The further consultation was again made available on The Insolvency Service's website. Subsequently, 10 consultees responded 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 the proposal retaining the ability for creditors and others entitled to the information to request a hard copy if required.

72. A full analysis of the consultation responses is at Annexes I and J with some specific comments for each proposal included in each of Annexes A – G.

PROPOSALS CONSULTED UPON NOT APPEARING IN THIS DRAFT ORDER

73. The consultations referred to above contained proposals which have not been proceeded with in this draft Order.

74. We consider it right that the Committees should be aware of the subsequent history of these proposals, in order to put this draft Order in context.

75. So far as the IVA consultation is concerned, three proposals, including the proposal contained in this draft Order relating to reporting to the court, appeared in the draft Legislative Reform (Insolvency)(Individual Voluntary Arrangements) Order 2008. That draft Order was laid before Parliament on 9 October 2008. It was subsequently withdrawn on 27 October 2008. Of the remaining two of the three proposals in the 2008 draft Order, one is under review and it is intended that the other with be implemented when a suitable opportunity arises in a Bill. The other proposals in the IVA consultation were not considered suitable for inclusion in a draft Legislative Reform Order.

76. In addition to the opt-in proposal, four other proposals in the paper "*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"* have not been proceeded with in this draft Order.

77. The proposal to amend requirements for the advertising of the initial meetings of creditors and members, in a voluntary liquidation was taken forward under the Legislative Reform (Insolvency)(Advertising Requirements) Order 2009 (S.I. 2009/864) which came into force on 6 April 2009.

78. The two proposals relating to the Insolvency Services Account are no longer considered to be appropriate for an LRO and one other proposal is not being taken forward.

SUBORDINATE LEGISLATION

79. The draft Order will require secondary legislation. An order may confer or transfer the function of legislating on a Minister of the Crown.

80. Article 3 of the draft Order (which inserts new sections into the Act dealing with electronic meetings and the use of websites) will require appropriate rules to be prescribed.

81. Sections 411 and 412 of the Act enable rules in respect of corporate and individual insolvency respectively to be made in relation to England and Wales, by the Lord Chancellor with the concurrence of the Secretary of State (and, in the case of rules that affect court procedure, with the concurrence of the Lord Chief Justice). Rules in respect of corporate insolvency in relation to Scotland may be made by the Secretary of State.

82. Section 413 of the Insolvency Act 1986 also prescribes that any such rules made by the Lord Chancellor can only be made after consultation with the Insolvency Rules Committee.

83. We intend to use these existing provisions to prescribe the rules for the purposes of the sections proposed to be inserted into the Act by article 3 of the draft Order.

DEVOLVED ADMINISTRATIONS

Wales

84. All of the proposed changes apply to Wales. Neither corporate nor individual insolvency are devolved matters. Consequently the draft Order does not require the formal consent of the Welsh Assembly Government. The proposals were 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. Consequently, there is no reference to Wales in each of the Annexes dealing with the individual proposals (Annexes A-G).

Scotland

85. Individual insolvency is devolved and is dealt with in Scotland under the Bankruptcy (Scotland) Act 1985 and not the Act. Accordingly, where a proposal in the draft Order relates to individual insolvency it does not extend to Scotland.

86. 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 M). 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.

87. This means that where a proposal in the draft Order relates to corporate insolvency, it extends to Scotland but in some cases there is a provision preventing the proposal from applying to a winding up in Scotland or Scottish receivers.

88. Each of the Annexes dealing with the individual proposals (Annexes A-G) contains a section explaining the approach as regards Scotland.

89. 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. They are exploring whether any of the changes can be made for Scotland using appropriate legislative means in that jurisdiction.

Northern Ireland

90. Individual and corporate insolvency are devolved matters in Northern Ireland. None of the proposed changes extend to Northern Ireland. Consequently, there is no reference to Northern Ireland in each of the Annexes dealing with the individual proposals (Annexes A-G).

COMPATIBILITY WITH THE EUROPEAN CONVENTION ON HUMAN RIGHTS

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

THE EUROPEAN UNION

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

ANNEX A

Remote Attendance at Meetings

Introductory

1. There are three proposals intended to modernise and make more flexible the means of communication and the exchange of information between office-holders and creditors (and others who send or receive information) in insolvency cases.

2. The first of these involves making attendance at a meeting summoned in connection with insolvency proceedings more flexible by permitting those attending meetings to do so other than by personal attendance or by proxy, i.e. it would allow a person to attend such a meeting by any means which permits them to vote and/or be heard at the meeting.

Present position

3. The Act and the Rules require various meetings to be held from time to time as part of the conduct of insolvency proceedings. These meetings range from meetings of members and/or creditors to appoint an office-holder following the commencement of an insolvency procedure or to vote upon a proposal to enter into a legally binding voluntary arrangement, to meetings that the office-holder is bound to convene to determine issues such as the agreement of his remuneration, to enable the creditors to sanction certain activities that the office-holder may need to undertake, or simply formally to conclude or terminate the insolvency process.

4. When the Enterprise Act 2002 amended the Act by introducing a new modernised form of Administration proceedings, the opportunity was taken to include a provision allowing anything that can be done at a creditors' meeting to be done instead by correspondence between the administrator and the creditors (see paragraph 58 of Schedule B1 to the Act). This has been a useful development of the insolvency legislation but the insolvency profession has suggested to us that its usefulness is limited in the case of any meeting where any kind of interaction or discussion is necessary, for example, where different insolvency practitioners may be put forward for appointment as office-holder or where modifications may be proposed to proposals from the office-holder.

5. In all other forms of insolvency proceedings, meetings required to be held under the Act must be meetings held at a particular venue which creditors must attend either in person or by proxy.

The proposal

6. Article 3 inserts two new sections into the Act dealing with remote attendance at meetings. Proposed new sections 246A (for corporate insolvency) and 379A (for individual insolvency) effectively expand the concept of "attendance" at a meeting. They provide that, where the person

summoning a meeting considers it appropriate, a meeting can be conducted and held in such a way that persons who are not present together at the same place may attend it. In such a case, a person "attends" the meeting if they are able to exercise their rights to speak and vote at that meeting. In other words, a person can be said to attend a meeting as long as they can communicate their opinions on the business of the meeting and their vote on resolutions put to the meeting can be recorded at the same time as the votes of others attending the meeting. This would allow meetings to be held in a more flexible manner with some creditors attending by being present in person and others by other means, e.g. by telephone link, video-conferencing or even online. The intention is to provide a broad framework that users can take advantage of, one that will provide more flexibility and which over time will make it easier for creditors/members to participate in meetings within insolvency proceedings as technology and levels of take-up improve.

7. If an office-holder proposes to summon a meeting in circumstances where he does not intend to provide any venue for the meeting which can be attended by being present in person, creditors representing 10% in value of the creditors or members representing 10% of total voting rights will have the option of obliging the office-holder to specify an actual place for the meeting instead of having arrangements for remote attendance only (see proposed section 246A(9) and 379A(8)). The percentage/proportion has been fixed at 10%. This percentage is considered appropriate to safeguard the interests of minority creditors/members.

8. The proposed new section 246A will not apply in the case of members' meetings in a members' voluntary winding up (i.e. a "solvent" winding up). These meetings will continue to be governed by the Companies Act 2006. This Act is to be amended as part of the implementation of the EU Shareholder Rights Directive (2007/36/EC) to clarify that meetings of members may be held by electronic means.

How does our proposal remove or reduce burdens?

9. Currently, creditors/members, if they wish to be involved in the business of the meeting, have either to travel to the meeting, perhaps also requiring them to take time off work or make other domestic re-arrangements, or appoint someone to act as their proxy. Where a person attends a meeting by proxy, their ability to participate in the meeting is restricted since either they have to have made up their mind how to vote in advance of the meeting without having heard any argument which might take place or they delegate decision-making entirely to their proxy.

10. The proposal will provide the possibility for such creditors/members fully to participate in the insolvency process by enabling them to attend these meetings at minimal cost and inconvenience (i.e. from their own office or home, via for example, their computer or telephone).

11. Costs are also incurred by the office-holder in arranging a venue for a meeting which needs to be large enough to accommodate all the creditors/members who may attend. The office-holder has no way of knowing for certain in advance how many people will attend. This could result in hire charges for a larger venue than, in the event, is needed, thereby reducing the money available to the creditors/members but to no useful purpose (with the benefit of hindsight). If in the course of an insolvency proceeding it becomes apparent that certain creditors/members are likely to want to attend remotely then this could result in the office-holder being able to hire smaller venues or use his own offices as a venue. This would reduce his costs and thus increase the amount of money available for distribution to creditors/members.

Consultation

12. The majority of those responding to the consultation welcomed a more flexible concept of meetings as a useful and desirable measure. Two respondents mentioned that it would be particularly useful where creditors are based in different jurisdictions.

13. HMRC supported the proposal after discussion with The Insolvency Service, although they thought it unlikely that larger remote meetings would be appropriate.

14. Whether or not remote meetings would be appropriate would be a matter for the professional judgement of the insolvency office holder.

Devolution – Scotland

15. 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 M). However the winding up of a business association is only partially reserved. There is an exception to the reservation for winding up for "the process of winding up". In other words, matters relating to the process of winding up after it has commenced are not reserved. This includes "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".

16. It has been agreed with the devolved authorities in Scotland that the manner in which meetings are held after the commencement of a winding up falls within the "process of winding up" exception with the result that the proposed new section 246A should not apply to a winding up in Scotland. An exclusion has been drafted accordingly.

17. In addition, there is an exception to the reservation in Section C2 for "receivers and floating charges". Accordingly, section 246A should not apply in any case where a receiver has been appointed under Scottish law

and convenes a meeting and again an appropriate exclusion has been included in section 246A(2).

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?

18. No. The Order is necessary as only by amending the Act will it be possible to allow those attending a meeting to do so otherwise than by presence in person at a particular venue or by appointing a proxy. For example, requirements in the Act for the person summoning a meeting to specify a place for the meeting could not be satisfied by setting out arrangements for a meeting where there was to be no physical venue (e.g. where a meeting is to be held wholly online), unless the Act were to be amended to allow this.

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

19. We consider that the proposed new sections 246A and 379A are proportionate to the policy objective of allowing persons to attend meetings otherwise than by presence in person or by appointing a proxy. They have the effect of widening the concept of attendance but provide that a person only qualifies as attending if he is in a position to communicate his views, during the meeting, to all those attending the meeting and if he can vote on resolutions during the meeting and his vote can be counted at the same time as votes of others attending the meeting.

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?

20. We do not consider that any persons are adversely affected by this proposal. IPs will not be obliged to offer alternatives to a meeting at a particular venue if to do so would not be cost effective/practical. This was a concern raised by some respondents to the consultation. However, sections 246A and 379A are permissive in effect and do not require the office-holder to provide multimedia meetings.

21. Given current levels of technology, it is likely that in the short to medium term meetings will continue to be held at a venue but with the option for some people to attend remotely. Thus creditors/members would still have the option of attending in person. It is also unlikely in the short term that a meeting with no physical venue at all would be practical where a meeting is to be attended by large numbers of creditors/members.

22. If in any case where the technology allows, a meeting could be held otherwise than at a venue (e.g. an online or telephone meeting), 10% of creditors by value/members by voting rights will have the right to demand

that the person convening the meeting should specify a physical location where the meeting can be attended in person.

23. Where, in such circumstances, less than 10% of the creditors by value/members by voting rights desire a physical meeting, but cannot require one, we consider that although they may be adversely affected, a fair balance is struck having regard to the wishes of the great majority of creditors by value/members by voting rights. Moreover, an inability to attend in person does not necessarily disenfranchise the creditor/member as he may be able in any event to participate in real time (e.g. by telephone) and has a right to attend by proxy.

Does the provision remove any necessary protection?

24. Broadening the concept of attendance at meetings will not remove any necessary protection. As mentioned above, the provisions have been drafted with the intention that a person only qualifies as attending if he is in a position to communicate his views, during the meeting, to all those attending the meeting and if he can vote on resolutions during the meeting and his vote can be counted at the same time as votes of others attending the meeting. In other words a person will only be able to attend if he or she is able to participate adequately in the business of the meeting.

25. The provisions are modelled in part on the new provisions governing meetings of members of companies which appear in the Model Articles intended to replace Table A under the new Companies Act 2006. Accordingly, in future any company which has incorporated the Model Articles as its Articles of Association will in any event have similar provisions in place governing the conduct of meetings of members whilst it is solvent.

26. Moreover, as mentioned above, if an office-holder proposes to summon a meeting in circumstances where he does not intend to specify any venue for the meeting which can be attended in person, 10% of creditors in value of the total creditors, or 10% of members by total voting rights, will have the option of obliging the office-holder to specify such a venue (see section 246A(9) and 379A(8)).

27. Also, existing provisions of the Act which allow creditors and other interested parties to apply to court if dissatisfied with the actions of an office-holder would continue to apply to the conduct of meetings. See, for example, section 6 (company voluntary arrangements), section 112 and section 168(5) (all liquidations), section 262 (individual voluntary arrangements), section 303(1) (bankruptcy) and paragraph 74(1) of Schedule B1 (administration).

28. Two respondents to the consultation raised a concern that the use of communications technology for the holding of meetings might increase the scope for creditors to challenge the validity of meetings, for example, by claiming that there had been a breakdown in the technology. We believe

that IPs as responsible and accountable professionals will only opt to use technology when they are satisfied that it is sufficiently robust and secure. The proposed new section 246A has been drafted to allow the convener of a meeting to make whatever arrangements he or she considers appropriate to ensure the identification of those attending the meeting and the security of any electronic means used to enable attendance at it.

29. Another concern expressed by two respondents was that there were certain key or large meetings where it would be inappropriate for there to be no physical meeting. Decisions as to which meetings should be held making use of multimedia technology would be for the insolvency office-holder to make. No office-holder would be obliged to use multimedia for any particular meeting if they did not feel this was an appropriate step and they would be the person best placed to make this decision, having the best idea of the potential complexities involved in particular meetings or the likely number of attendees. As over time technological advances are made, the opportunities for use of the technology may expand.

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

30. Creditors and members will continue to have the right to attend meetings and vote/speak at meetings during insolvency proceedings. The proposal widens the range of options available for the exercise of those rights. Indeed, the more flexible approach to attendance may in fact encourage greater creditor participation in insolvency proceedings i.e. it may enhance the take up of existing rights by creditors, particularly those who are not located near the venue where the meeting in a proceeding is being held.

31. An office-holder can propose that a meeting should be held entirely remotely but can only do so where in his reasonable opinion providing a venue is unnecessary or inexpedient. If an office-holder proposes a meeting without any venue, creditors and members will have the right described in paragraph 26 to requisition a meeting at a venue which allows attendance by being present in person. That right will be exercisable by creditors representing 10% in value of the total creditors, or members representing a 10% of total voting rights. If *over* 90% of the creditors/members do not oppose the holding of a meeting which can be attended remotely only, it does not seem reasonable for the remaining small minority to be able to insist on a physical venue. Moreover, the minority is unlikely to be completely disenfranchised (see paragraph 23).

32. Again, the rights of the creditors or members to challenge decisions or actions of the office-holder referred to in paragraph 27 will continue to be exercisable.

33. Accordingly, the new provisions do not prevent 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?

34. The proposed new sections 246A and 379A are not of constitutional significance.

Commencement

35. The insertion of sections 246A and 379A into the Insolvency Act 1986, made by article 3, would come into force on 6th April 2010.

ANNEX B

Use of websites

Introductory

1. The second of the three proposals intended to modernise and make more flexible the means of communication and the exchange of information between office-holders and creditors (and others who send or receive information) in insolvency cases relates to the use of websites for those purposes.

The present position

2. The Act and the Rules contain numerous provisions requiring the office-holder to send documents or information to creditors or members or other persons in the course of insolvency proceedings. As part of the project to modernise and consolidate the insolvency secondary legislation (in particular, the Rules) which is going on in tandem with the proposed Legislative Reform Order, new Insolvency Rules will provide that, subject to contrary provision, electronic communication can be used where there is a requirement (under the Act or the Rules themselves) for one person to give notice or send or deliver a document to another. Accordingly, in future where the Act simply uses words such as "send", "give notice", "furnish" etc., it should in most cases be possible for e-mail or other electronic methods of communication to be used as a method of sending.

3. However, a key part of the expansion of the use of electronic communications in insolvency proceedings is the proposal in the draft Order to allow the insolvency office-holder to put documents and information on a website which creditors/members in the proceedings can visit having been sent a link by e-mail or post. This proposal could not be introduced under the Rules with enabling primary legislation as an office-holder would not be complying with his obligation to "send" the document if all he was doing was providing the means by which a person might access it.

The proposal

4. The proposal is that a new section 246B (for corporate insolvency) and a new section 379B (for individual insolvency) should be inserted into Parts 6 (miscellaneous provisions applying to companies which are insolvent or in liquidation) and 10 (individual insolvency: general provisions) respectively of the Act– see article 3 of the draft Order. These sections expressly permit the office-holder to use a website for the communication of information and sending of documents.

5. Detailed provisions governing the use of websites for such purposes will be set out in new Rules made under sections 411 and 412 of the Act (see Annex N for the process by which rules are made). These rules are in

draft and are currently being considered by the Insolvency Rules Committee.

6. In keeping with normal practice in insolvency legislation, therefore, the detail of how documents and information could be made available on a website with a link being sent to intended recipients will be set out in the Rules. The intention is that, save where the court in exceptional circumstances orders otherwise, the rules will provide for a notice to be sent to all persons required to be sent the document in question (in hard copy unless the intended recipient has consented to e-mail) stating that the document is available for viewing on the website, providing the address of the website along with any password needed to gain access to that site, and giving a contact (telephone number, e-mail address and address) to whom the intended recipient may make a request for a hard copy of the document. There would be a requirement to retain documents on the website for at least 3 months and the office-holder would be required to send any hard copy of a document requested free of charge within 5 days of receipt of the request.

7. These rules will sit alongside the existing rules governing these matters in relation to the service of documents in hard copy and the new rules governing the use of electronic communications generally in insolvency proceedings.

How does our proposal remove or reduce burdens?

8. Where documents or information have to be sent by one person to another in the course of insolvency proceedings, costs of printing and postage are incurred if the documents and information have to be sent out in hard copy and accordingly, there will be cost savings if the use of electronic communication can be expanded in insolvency proceedings. These savings should mean that more assets will be left in the estate to be distributed to creditors.

9. The use of websites will be particularly useful where detailed reports or a number of documents have to be sent to creditors or members. Documents are often bulky (e.g. proposals in voluntary arrangements or administration, statements of affairs, where there are numerous creditors) and are required to be sent to numerous recipients (creditors or members). In these cases, the cost of postage in particular can be substantial.

Consultation

10. The consultation document issued in September 2007 stated that the rules underpinning the power to use a website would provide that the right of an insolvency office-holder to use a website for the sending of information or documents to others would be subject to the consent (general or specific) of the intended recipient and recipients would be given a right to request a hard copy.

11. The response to the consultation in relation to this proposal was largely positive. On further consideration, however, we came to the conclusion that the detail of the rules needed amending and, specifically, that a requirement for consent (general or specific) would not be appropriate in this context and could in practice be cumbersome to administer and inconvenient. It might also reduce cost savings otherwise envisaged as the result of our proposals more generally.

12. Consequently, we issued a second consultation paper on 15th August 2008 setting out the change proposed to be made to the rules in relation to the use of websites.

13. The responses to this further consultation were unanimous in the view that consent should not be required for use of a website and sufficient safeguards were provided by giving creditors the right to request a hard copy of the document, free of charge from the office-holder.

Devolution – Scotland

14. As mentioned above, whereas corporate insolvency, including company voluntary arrangements and administration, is reserved (see Section C2 (d) and (e) of Schedule 5 to the Scotland Act 1998 a copy of which appears in Annex M), winding up is only partially reserved. The use of websites for the sending of documents by an office-holder falls within the "process of winding up" exception to the reservation in Section C2 and the sending of documents by a receiver is covered by the "receivers" exception. As a result, the same carve-out as for meetings applies in relation to the use of websites. (See new section 246B(2).)

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?

15. Requirements in the Act for documents and information to be sent to creditors or others in the course of an insolvency proceeding use terms such as "send", "furnish" or "deliver". This language could not be interpreted as allowing the office-holder instead to send a link to a website where the intended recipient of the document can himself or herself access the document. As a result, an amendment to the Act is needed for this proposal to be implemented.

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

16. The policy objective is to make the provision of information to those involved in insolvency proceedings more efficient and cost effective, whilst at the same time ensuring that those persons still have access to all documents/information they are currently sent.

17. The proposal gives office-holders the opportunity to reduce the number of hard copies of notices or lengthy reports printed and sent out by post in proceedings, as in future they will be able to limit the sending of hard copies to those who genuinely desire or need a hard copy and are actually interested in receiving those documents.

18. The proposal is proportionate given that the intended recipients will have to be sent notice that documents are being made available on a website and will have the right to request a free hard copy of the document in question.

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?

19. We believe that the provision, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it.

20. As far as insolvency office-holders are concerned, there should be no real adverse effect as it will not be compulsory for them to use this method of communication if they do not wish to and so they are not being required to take on any extra burdens in terms of technology, administration, etc. which they do not want to.

21. In accordance with proposed Rules, it is intended that intended recipients will have the right to request a free hard copy of any document made available by means of a website. This right would be subject to any contrary direction made by the court in exceptional circumstances. Under current legislation, it is already possible for the court to make contrary direction in exceptional circumstances and this approach would therefore be consistent with current practice (please see paragraph 24 and footnote 3 thereto). It is true that currently in the case of a document required to be sent to all known creditors, for example, the creditors will automatically receive a hard copy of that document. Under the proposal a creditor who does not want to or is unable to access the document by computer will have to take a positive step to receive a hard copy of the document. However, we believe that in the modern world, the number of trade creditors without access to a computer will be small. Even with consumer creditors, the numbers without any access to the internet must also be small and ever dwindling. [2] Also the step such a creditor is being asked to take is not unduly burdensome and the copy document will be supplied free of charge.

22. We believe that the impact on those creditors who will not be content to access and/or download a copy of a document is fair given the overall

[2] According to information published by National Statistics in 2006 51% of households had broadband internet access, an increase of 40%. Over 99 per cent of the largest businesses had Internet access every year since 2002. Over this same period, internet access by smaller businesses has continued to grow. 88.4 per cent of the smallest businesses, with employment of 10 to 49, had Internet access in 2006, increasing from 75.4 per cent in 2002.

benefits to creditors (including themselves) in terms of cost savings. Under the Act as it currently stands, large numbers of hard copy documents are sent out and simply binned/shredded by creditors who have no interest in their contents. This view is supported by the response to the original consultation on this proposal.

Does the provision remove any necessary protection?

23. Allowing the office-holder to use a website to communicate with creditors and others will not remove any necessary protection as, save in exceptional circumstances, intended recipients will be sent a notice regarding the availability of the document in question on the website and will have the right to request a hard copy of it, free of charge, from the office-holder

24. It is worth noting the attitude of the courts in insolvency proceedings to communication with creditors. In two recent cases[3], the courts directed or permitted the use of websites for communicating with creditors.

25. Obviously the court would not have made such orders had it believed that it would unduly prejudice the interests of the creditors. The court would have balanced issues of protection against the level of costs involved in communicating with large numbers of creditors given that these costs eat up the assets available to distribute to creditors at the end of the day. In other words, it is spending the creditors' own money.

26. We consider that the inclusion of detailed provisions governing the use of websites in insolvency proceedings in rules made under sections 411 and 412 provides adequate safeguards for recipients of the communications. The Rules are made by the Lord Chancellor, not the Secretary of State for Business, Enterprise and Regulatory Reform and can only be made after the Lord Chancellor has consulted the Insolvency Rules Committee under section 413 of the Act. The Committee is made up of eminent judges, lawyers and other professionals with expertise in insolvency, whose views would obviously carry great weight with the Lord Chancellor.

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

27. 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.

[3] For example, in a recent application to the High Court on 3rd November 2006 (unreported) by the administrators of Farepak Food & Gifts Ltd (in administration) for directions on dispensing with certain statutory requirements, Lawrence Collins J directed that the administrators could communicate throughout the administration with creditors by agents posting on websites. In the earlier case of Re Sporting Options plc [2004] EWHC 3128, [2005] BCC 88, the court permitted an administrator to send out a document to creditors indicating a website where his proposals for the administration could be found.

28. Obviously creditors, members and others involved in insolvency procedures have the right to have communicated to them the documents the insolvency office-holder is required by the Act to send. Subject to contrary direction made by the court in exceptional circumstances, this essential right is retained: they will receive a notice including all necessary information to allow them to access the documents on a website; or, if they so wish, the intended recipient of documents will receive upon request a hard copy of documents communicated by being made available on a website

Is the provision of constitutional significance?

29. New sections 246B and 379B are not of constitutional significance as they involve a change to certain procedural requirements in insolvency proceedings.

Commencement

30. The insertion of sections 246B and 379B, made by article 3 into the Insolvency Act 1986, would come into force on 6th April 2010.

ANNEX C
References to "writing" and "post"

Introductory

1. The third of the three proposals intended to modernise 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 relates to the use of electronic communication in cases where the Act requires "writing" or "post".

2. This proposal is a more limited and technical proposal in the way it affects the Act. However, it is of wider benefit to the extent that it achieves consistency with the proposed changes to the Rules as they modernise the means of communication and the exchange of information in insolvency cases by allowing for the use of e-mail or other electronic methods of communication, such as a website, for the sending or supplying of documents or information.

The present position

3. The Act and the Rules contain numerous provisions requiring documents or information to be sent by one person to another in the course of insolvency proceedings.

4. There is, however, currently, great uncertainty as to whether these can be sent using electronic communication because (with the exception of the provisions relating to administration which were introduced by the Enterprise Act 2002) the Act and the Rules do not refer to electronic communications. This means that to a great extent office-holders believe they are required to send things in hard copy. As part of the project to modernise and consolidate the insolvency secondary legislation, which is going on in tandem with this draft Order, new Rules will provide that, subject to contrary provision, electronic communication can be used where there is a requirement (under the Act or the Rules themselves) for one person to give notice or send or deliver a document to another. Accordingly, in future where the Act simply uses words such as "send", "give notice", "furnish" etc., it will in most cases be possible for e-mail or other electronic methods of communication to be used as a method of sending.

5. However, the Act contains a number of provisions which require documents, information or consent to be "in writing" or "written".

6. The Enterprise Act 2002 amended part of the Act to specify that electronic communication may be used in cases where the Act refers to documents or information being "in writing" (see paragraph 111(2) of Schedule B1 to the Act: "A reference in this Schedule to a thing in writing includes a reference to a thing in electronic form"). However, the provision applies

only in relation to that Schedule and therefore only to administration proceedings.

7. The lack of such a provision in relation to the other proceedings under the Act gives rise to real doubt as to whether electronic communication is allowed in cases where there is a requirement in the Act for "writing" in those other proceedings. This lack of certainty cannot be "cured" by amendments to the Rules to allow the use of electronic communications generally in insolvency proceedings as no provision in the Rules can override the Act. In other words, if it is thought that a requirement in the Act for "writing" does not include a thing in electronic form, a provision in the Rules allowing documents to be sent electronically could not override that and indeed the new Rule allowing documents to be sent electronically will expressly state that it only applies in cases where the Act does not require some other form of delivery.

8. In addition, sections 95 and 98 of the Act require the notices of the meetings held under those sections to be sent to creditors "by post" which explicitly excludes electronic means.

The proposal

9. Article 4 of the draft Order inserts a new section 436B (references to things in writing) into the Act which provides that a reference in the Act to a thing in writing includes that thing in electronic form. The equivalent provision in Schedule B1 is then repealed, as the new section 436B would apply to the Act as a whole. This repeal is a consequential amendment under section 1(8) of the LRRA rather than, as was thought at the time the consultation was published, a repeal and restatement of the law.

10. Subsection (2) of the new section 436B lists those sections containing references to "writing" where the new wider definition is not to apply. This list includes, for example, sections where personal service of a document is required by the Act.

11. It is also proposed to remove the references in sections 95 and 98 of the Act to the notices of the meetings being sent "by post". This amendment is made in article 7 of the draft Order[4].

12. New Rules under sections 411 and 412 of the Act relating to the use of electronic communication generally in insolvency proceedings will provide that a notice or other document required to be sent under the Act or Rules may be sent electronically but only where the intended recipient has consented (in general or in the specific case) to electronic delivery and has provided an appropriate address. (see Annex N for the process by which rules are made). These rules are in draft and are currently being considered by the Insolvency Rules Committee.

[4] Sections 95 and 98 of the Act have been amended in respect of advertising requirements by the Legislative Reform (Insolvency)(Advertising Requirements) Order 2009 (S.I. 2009/864) which came into force on 6th April 2009. See also comments in Annex K

13. Under the proposal, the consent of the recipient to receive information electronically would be required before this method of communication could be replied upon.

How does our proposal remove or reduce burdens?

14. As mentioned above in connection with the proposal for the use of websites, there will be cost savings if the use of electronic communication can be expanded in insolvency proceedings.

"Writing"

15. The burden to be removed is the financial and administrative burden resulting from doubt. Doubt is caused by para 111(2) of Schedule B1. The doubt is whether the use of electronic format is permitted only with respect to administration or whether paragraph 111(2) is an unnecessary re-statement for Schedule B1 of what already holds for the rest of the Act. Put another way, is the use of electronic restricted to administration?

16. The existence of the doubt imposes burdens: an office-holder will either incur a financial burden by going to the considerable expense of seeking legal advice and/or making an application to the court for directions; or, out of an abundance of caution, they will conclude that electronic format cannot safely be used in those particular cases and will continue to send the relevant documents and information out or only accept receipt of them where they are in hard copy, thereby incurring an administrative burden.

17. An express provision to the effect that electronic communications can be used in cases where the Act specifically refers to documents and information being "in writing", will remove these burdens. Legal advice as to the proper interpretation of those sections of the Act requiring "writing" (itself almost certain to conclude that the position is unclear) or guidance through IPs' professional bodies (through statements of insolvency practice) or the Secretary of State (through "Dear Insolvency Practitioner" newsletters) cannot settle the law or provide certainty and having regard to the consequences of uncertainty, would be of little practical value.

18. Why is it important for there to be certainty? The following two examples illustrate the potential effects of uncertainty:

- Section 84 of the Act requires a company to give written notice of a proposed resolution for voluntary winding up to the holder of a qualifying floating charge**.** If the holder of the qualifying floating charge does not respond within five business days or if he consents, the company may pass a resolution that it be wound up voluntarily. The holder of the qualifying floating charge thus has five business days in which to exercise his right to appoint an administrator. It will be seen that it is important for the company (or the qualifying floating charge holder) to be satisfied that it has complied with the requirements as to timing. Timings will vary

depending on the method of communication. Failure to comply with the requirements as to timing may affect the validity of the liquidator or administrator's appointment and their subsequent actions.

- Under section 178 of the Act an office-holder may by notice disclaim onerous property, e.g. contaminated land or an onerous or otherwise unprofitable contract. However, he cannot disclaim it unless within 28 days of receipt of an application in writing by a person interested in the property, he has given him a notice of disclaimer. Again, it will be noted that it is important that the office holder is satisfied that the application is given in the correct form and that matters are dealt with in the correct time frame. Failure to do so may result in the insolvent estate being obliged to retain the contaminated land or unprofitable contract with the effect that it may incur expense which otherwise might have been applied to the creditors.

19. To avoid such pitfalls, a company or office-holder receiving such notice or application in electronic form is likely to ask for the holder of the qualifying floating charge or the person with the interest in the onerous property to provide the document in hard copy by post thereby incurring an administrative burden and delay on himself and the other party. Moreover, having to keep track of anomalies of this kind and adapt to them would be an administrative inconvenience and obstacle to efficiency for users of the insolvency legislation.

20. It is important for the new regime for electronic communications to be fit for purpose and it will not deliver maximum efficiencies and costs savings without the proposed amendment in article 4.

21. Making the proposed amendment will mean that electronic communications will be permitted in all cases except those where it is expressly excluded (e.g. in the handful of exceptional cases well known to insolvency practitioners where personal service of a key document is required by the Act). This means there will be a coherent and logical regime for electronic communications in the Act and Rules. Without this amendment to the Act, in order to ensure they were complying with the Act, IPs, creditors and others, including case managers on behalf of creditors, would have to put systems in place to ensure that they did not use electronic communications, even where there was consent from the intended recipient, in those specific cases where the Act refers to "writing". Thus, in addition to any small costs savings from the ability to use electronic communications in the particular instances where "writing" is required, the key benefits of the proposal are removing an administrative inconvenience or obstacle to efficiency.

"Post"

22. Under the new regime, consent to receive communication electronically will be required. In most instances, the notices of the meetings required to

be held under sections 95 and 98 of the Act will have to be sent by post as they fall at the beginning of the proceedings before the creditors have had a chance to consent to the use of electronic communications and to give an e-mail address. However, where a body, such as HM Revenue & Customs or one of the major banks, has given a general consent to all documents in insolvency proceedings in which it is a creditor being sent to it by e-mail or other electronic methods of communication, there will be savings to be made from the very outset of the proceedings.

23. One further benefit is that electronic delivery is a more timely form of delivery as it can be almost instant, unlike postal delivery. One respondent to the consultation also commented that electronic delivery can be seen as safer than postal delivery. All of which helps to remove administrative inconveniences and promotes greater efficiency.

Consultation response

24. The response to the consultation showed very high levels of support for the view that the overall introduction of electronic communications into insolvency proceedings would provide an opportunity for significant costs savings. One or two consultees felt that even greater savings could be achieved by a more far reaching approach, by including the transfer of data files and introducing some standardisation in respect of documentation, but it was felt that it was right at this stage to confine this draft Order to the essential changes enabling electronic communication generally.

25. It should be noted that the estimates of likely savings given by respondents to the consultation on this proposal relate to the overall expansion of electronic communication in insolvency proceedings, most of which will be achieved by changes to the Rules rather than the more limited changes introduced by articles 4 and 7 of the draft Order.

26. Whilst the response to the consultation was perhaps focussed on the overall project for the introduction of electronic communications rather than on the more narrow content of the proposal as regards references to “writing” or “post”, it did reveal a great appetite amongst those involved in insolvency proceedings for an expansion of the use of electronic communications. Importantly, it also indicated that for the system to work effectively and deliver high levels of costs savings, it is crucial that the system is easy and straightforward to operate.

Devolution – Scotland

27. In five cases references to things in writing in the Act occur in sections relating to devolved matters. These are sections 53 (mode of appointment by holder of charge), 67(2) (report by receiver), 70(4) (reference to instrument creating a charge), 198(3) (duties of sheriff principal re

examination), and, in the case of a winding up in Scotland, section 111(4) (dissent from arrangement under s. 110). The first three of these sections relate to Scottish receivers. Section 111(4) which deals with the manner in which a liquidator may appoint an arbitrator and section 198(3) (duties of sheriff principal re examination) fall within the exception to the reservation in Section C1 of the Scotland Act 1998 as they relate to the conduct of the liquidation.

28. These sections are accordingly listed in the proposed new section 436B(2) as being cases where the new provision as to the meaning of "writing" should not apply.

29. The requirements in sections 95 and 98 in relation to the posting of notices of the meetings required under those sections fall into the category of "process of winding up" and are therefore devolved as regards Scotland. As a result, the proposed amendments to sections 95 and 98 provide for 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.

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?

30. The Insolvency Service believes that none of these changes could be made by non-legislative means.

31. In the case of the provision setting out the meaning of "in writing", it is not considered that guidance would be adequate to remove the doubt as to whether electronic communication was possible in the case of references occurring outside Schedule B1. This is because the existence of the provision in that Schedule casts too much doubt on the legal position as regards references elsewhere and, having regard to the possible consequences, it is considered that the more expensive and inconvenient safety of hard copy would be favoured over electronic format.

32. Clearly the removal of the requirement for the notices of the meetings to be held under sections 95 and 98 to be sent by post requires an amendment to the Act

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

33. The policy objective is to allow the use of electronic communication where possible. The effect of the provision is proportionate in that each reference to "writing" in the Act has been considered individually and cases where the use of electronic communication would not be appropriate have been identified and excluded from the operation of the new definition. An example of this is the service of a written statutory demand, which will not be allowed by electronic communication.

34. Removal of the requirement to send the notices of a meeting by post is proportionate in that it does not remove the option of the sending the notices by post; it simply provides a choice of method of sending. The removal of the requirement will allow the notices to be sent electronically in cases where consent and an appropriate address have been obtained.

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?

35. It is not thought that any person is adversely affected by this proposal given that the new rules governing the use of electronic communications generally in insolvency proceedings will mean that the intended recipient of an electronic document will need to have consented to electronic delivery before it can be sent to him in this way and provided an appropriate address.

36. Equally, there will be no obligation on office holers to use electronic communications. There will be no prejudice to them as they will be in response to electronic form or by post with the appropriate e-mail address on it, thereby indicating a willingness to accept electronic communication.

37. One respondent to the consultation, HMRC, mentioned that accepting electronic communication could mean that individual creditors in future had to bear the cost of printing documents. This comment probably applies more to the overall project of introducing electronic communication in the new Rules rather than to the specific references to writing in the Act which are the subject of the proposal in the draft Order. However, the answer is the same in both cases. The first point to make is that at the moment all creditors effectively bear the costs of all documents being printed and sent out in hard copy form. This proposal will mean that these costs will be reduced for all creditors. In addition, experienced creditors in a large number of insolvencies, like HMRC, will be able to tailor their consent to receive documents in electronic form so that it excludes large documents. Alternatively, creditors could decide to deal with the documents entirely electronically rather than incur the costs of printing. Additionally under the new Rules all creditors will always have the right to request a free hard copy of a document sent to them electronically even if they have consented to being sent it in that form.

Does the provision remove any necessary protection?

38. The increased availability and sophistication of electronic communication means that it can no longer be argued that a hard copy version of documents is essential in all cases. All kinds of notices and other documents can now be filed or sent electronically in many different fields. Permitting the expanded use of electronic delivery within insolvency proceedings does not remove any necessary protection.

39. The requirement for the intended recipient of a communication from an office-holder to have provided an appropriate address for documents to be sent to him electronically should also help to ensure that documents reach those for whom they are intended. Postal delivery might even be seen as riskier than electronic delivery because in the case of the latter it is very easy to get confirmation of receipt.

40. A further safeguard will be provided for in the new Rules on electronic communication in that a recipient of a document in electronic form will also have the right to request a free hard copy of that document from the office-holder.

41. All cases where the Act currently requires personal service of a document, because of its importance, have been excluded from the operation of the provision allowing electronic communication.

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

42. 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. This is because, subject to a contrary order of the court in exceptional circumstances, no one will be obliged to receive documents electronically as they will have the right to refuse their consent to the use of electronic delivery and will have the right to a hard copy in any event.

Is the provision of constitutional significance?

43. The proposed new section 436B and the amendments to sections 95 and 98 as regards the use of post are not of constitutional significance.

Commencement and transitional provision

44. The proposal is that the amendments to sections 95 and 98, which include the removal of references to "post", and the insertion of section 436B into the Act, made by article 4, will come into force on 6th April 2010. The amendments to sections 95 and 98 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 12 of the draft Order.

ANNEX D

Affidavits

Introductory

1. The Insolvency Service proposes to remove the requirement for certain documents in insolvency proceedings in England and Wales to be sworn by affidavit and replace it with a less burdensome requirement for such documents to be verified by a statement of truth in accordance with the Civil Procedure Rules 1998.

The present position

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

The proposal

3. Within the project previously referred to which is being undertaken to modernise the Rules it is proposed to replace all references to affidavits in the Rules with a reference to verification by a statement of truth. This will be consistent with the Civil Procedure Rules 1998, where affidavits in other areas of civil law have, with only a few exceptions, been replaced by witness statements verified by a statement of truth.

4. Article 5 of the draft Order sets out amendments to each section of the Act which includes a requirement for an affidavit and replaces it, as regards insolvency proceedings in England and Wales, with a requirement for verification by a statement of truth instead. Article 5(5) makes a minor consequential amendment to section 166 (application to court where default in complying with section 98 or 99).

How does the proposal remove or reduce burdens?

5. There is a financial cost to the person who is at present required to swear or affirm an affidavit as well as an administrative inconvenience in the need to attend on a solicitor/Commissioner for Oaths. The current cost of swearing/affirming is £5 plus £2 per exhibit.

6. There is also a financial cost and administrative inconvenience for the insolvency office-holder or his advisers who in some cases have little option but to make the practical arrangements for the person to swear the affidavit.

7. The proposal is that the requirement to verify by affidavit should be replaced by a requirement to verify by a statement of truth. A statement of truth does not have to be sworn or affirmed and so removes the need for the involvement of a solicitor or Commissioner for Oaths.

8. As there is no cost involved in verifying by means of a statement of truth these amendments will remove a burden, thereby improving the efficiency by which insolvency proceedings may be administered.

Devolution – Scotland

9. This proposal aims to adopt a procedure which applies in Civil Procedure Rules for the courts in England and Wales. Although in some cases the proceedings in which the affidavit is required might be reserved, it would not be possible or appropriate to impose this on the courts in Scotland. As a result, the amendments removing the requirement for an affidavit have in all cases been limited to proceedings in England and Wales.

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?

10. As the requirements for the relevant documents to be verified by affidavit are in the Act, it is only by an amendment to the relevant sections of that Act that they could be lifted.

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

11. The policy objective is to minimise the cost and administrative inconvenience involved in verifying certain key documents in insolvency proceedings. The Insolvency Service believes that the replacement of a requirement for an affidavit with a requirement for a statement of truth is a proportionate response to that objective.

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?

12. The Insolvency Service believes that, in so far as any group of persons is adversely affected by this proposal, a fair balance is struck between their interests and the public interest.

13. Affidavits may be sworn before solicitors, Commissioners for Oaths and other persons, in particular court staff. It will be noted that court staff generally do not charge for swearing affidavits.

14. Solicitors/Commissioners for Oaths will lose personal income. However, it is arguable that making themselves available to provide the present service might sometimes in fact be an onerous obligation rather than a genuine source of income, especially if that interrupts other, more highly remunerated fee-paying, work. This view is supported by insolvency lawyers, who agreed that administering oaths is a burden, rather than a source of income, for solicitors. We do not have any evidence to suggest that this is not a widely-held view in the legal profession as we received no other direct comments from those who were sent the consultation paper (which included the Law Society and the Notaries Society) on this point. It is possible that in the light of the effect of the Civil Procedure Rules, reductions in the requirements for things to be verified on oath or by affirmation have been accepted by the legal profession. This proposal simply follows the widespread changes that have already been implemented in other areas of the civil law.

Does the provision remove any necessary protection?

15. The Insolvency Service considers that there is no reduction in necessary protection as, with very few exceptions, in court proceedings generally the evidential value of a document or statement verified by a statement of truth is equivalent to one verified by affidavit.

16. The approach in this proposal is consistent with that already taken in Schedule B1 to the Act where the statement of affairs to be submitted by the directors in an administration has to be verified by a statement of truth – see paragraph 47 of the Schedule. Schedule B1 to the Act was inserted into the Act by the Enterprise Act 2002 and therefore already has a more modern approach to verification than the rest of the Act.

17. The approach is also consistent with that taken by the civil 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.

18. Under Rule 32.14 of the Civil Procedure Rules 1998 (which applies to insolvency proceedings), proceedings for contempt of court may be brought against a person for making a false statement in a document verified by a statement of truth without an honest belief in its truth. Such conduct would also amount to an offence under s. 5 of the Perjury Act 1911 (false statements made otherwise than on oath) which is concerned with false statements made in any report, account or other document which a person is required by any Act of Parliament to make or verify.

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

19. The proposal does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise. It does not remove any rights or freedoms but merely substitutes a less onerous, but no less rigorous, form of verification of a document.

Is the provision of constitutional significance?

20. The proposed amendments to the Act are not of constitutional significance.

Commencement

21. The amendments to sections 47, 95, 99, 131, 236, 366 and a minor consequential amendment to section 166 of the Act made by article 5, would come into force on 6th April 2010.

ANNEX E

Annual Meetings

Introductory

1. The Insolvency Service proposes to remove a requirement imposed upon the liquidator of a company in voluntary winding up in England and Wales to summon annual meetings of creditors and/or members for the purpose of laying an account of the liquidator's acts and dealings and of the conduct of the winding up during the preceding year (sections 93 and 105 of the Act).

The present position

2. Section 93 of the Act requires the liquidator of a company in members' voluntary liquidation ("MVL") to summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within 3 months from the year-end or such longer period as the Secretary of State may allow. The purpose of this meeting is for the liquidator to lay before the meeting an account of his acts and dealings, and of the conduct of the winding up, during the preceding year.

3. A company may only enter into a MVL where its directors make a statutory declaration that the company's debts can be paid in full, with statutory interest, within a period not exceeding twelve months (see section 89 of the Act). As these are cases where the company expects to pay its debts in full, it is the members (shareholders) of the company who "control" the liquidation, rather than its creditors. If the liquidator forms the view that the company is in fact insolvent, he is required to convert the liquidation into a creditors' voluntary liquidation ("CVL"), thereby shifting "control" of the liquidation to the company's creditors (see section 95 of the Act). However, it is possible for a MVL to be extended beyond 12 months where that deadline cannot be met, provided the members give permission and the company remains solvent.

4. Section 105 of the Act similarly requires the liquidator of a company in a CVL to summon general meetings of the company and its creditors at the end of the first year from the commencement of the winding up, or at the first convenient date within 3 months from the end of the year or such longer period as the Secretary of State may allow. The purpose of these meetings is for the liquidator to lay before each of them an account of his acts and dealings, and of the conduct of the winding up, during the preceding year.

The proposal

5. The proposal is to amend sections 93 and 105 of the Act by providing that they apply in the case of a winding up in Scotland only. This will effectively

remove the requirement for the meetings to be held in a winding up in England and Wales. See article 6 of the draft Order.

How does the proposal remove or reduce burdens?

6. Although the stated purpose of these meetings is to lay an account of the liquidator's dealings and of the conduct of the winding-up, IPs have stated that in practice this amounts to no more than laying before the meeting a copy of the receipts and payments account for that period, which the liquidator is obliged under section 192 of the Act to send to the Registrar of Companies and which is, therefore, publicly accessible, albeit at a cost. There is no requirement that any decisions should be made at the meeting; its purpose is simply to receive the account. The Insolvency Service understands (and this was confirmed by consultees – see detailed analysis of the response to the consultation at Annex I) that these meetings are rarely attended by creditors/members. However, because of the statutory requirement to hold them, the liquidator has to send out the notices of the meeting, proxy forms etc. and arrange a venue at which the meeting is to be held.

7. The financial cost of convening and holding of the meeting, including the time spent by the liquidator in chairing the meeting, is an expense which has to be met from the assets of the company in liquidation and therefore reduces the amount available for distribution to creditors (or, in an MVL, members).

Devolution – Scotland

8. The requirement to hold an annual meeting of creditors or members in a creditors' and a members' voluntary winding up respectively falls into the category of "process of winding up" and is therefore not reserved. As a result, we have left the requirement in place for Scotland whilst removing it for England and Wales by the simple expedient of restricting sections 93 and 105 of the Act in future to the winding up of a Scottish company.

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?

9. As the requirements to hold the annual meetings are enshrined in sections 93 and 105 of the Act, the policy objective of removing those requirements could only be achieved by an amendment to the Act.

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

10. The policy underlying this proposal is to remove a financial cost and administrative inconvenience which serves no effective purpose. However, the original intention behind the sections was to try to ensure

that creditors or members had the opportunity to receive information about the conduct of the liquidation.

11. Proposed amendments to the Rules, which are planned to come into effect at the same time as these proposed amendments, will introduce a requirement for liquidators (and office-holders in other insolvency procedures) to provide progress reports to the creditors/members. These reports will include the receipts and payments account currently required to be laid before the annual meeting, and, as part of an initiative in relation to the remuneration of insolvency office-holders arising out of the Rules modernisation project, will include a requirement to provide details of the remuneration the liquidator has taken, or proposes to take, over the course of the year. These new rules will also give creditors improved rights to request further information in relation to the liquidator's remuneration and expenses, and to challenge amounts of remuneration drawn by the liquidator.

12. The Insolvency Service believes that, given the new reporting regime being introduced separately in the new Rules, the removal of the requirement also to hold a meeting to lay an account of the conduct of the winding up is proportionate, as the information will be available to the creditors/members in another form.

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?

13. The Insolvency Service does not consider that any person is adversely affected by this proposal.

14. On the face of it, the provision removes the entitlement to receive information by attending a meeting. However, in any event, that information is publicly available by virtue of section 192 of the Act in the form and at the frequency provided for in rule 4.223. Although the Registrar of Companies imposes a modest charge for this information, it is suggested that the charge is likely to be less than the cost in time and money of attending the meeting. Moreover, in accordance with changes to the Rules which are currently before the Insolvency Rules Committee, the information will be provided to each creditor/member directly in the form of a progress report.

15. Therefore, the creditors/members will continue to receive information about the conduct of the winding up and liquidators will be relieved of the necessity of calling a meeting which served little purpose.

Does the provision remove any necessary protection?

16. The requirement to hold a meeting at which an account had to be laid was intended to ensure that the creditors/members were given appropriate information about the conduct of a winding up. Given that few creditors/members attend these meetings at present (as confirmed by the

consultation response) and that in future information will in any event be provided to members/creditors by means of a written report, we believe that the proposal does not remove any necessary protection.

17. Creditors/members will still be able to ask questions of the liquidator concerning information contained in the receipts and payments account (which will be published by Companies House under section 192 and sent to creditors/members as part of a progress report as mentioned in paragraph 11). In addition, any general rights under the Act to challenge the actions of the liquidator would remain unaffected by this proposed change.

18. The consultation response showed overwhelming support for this proposal subject only to the proviso that creditors/members should continue to receive the relevant information by other means.

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

19. Obviously as a result of the proposal creditors/members would no longer have the right to attend a meeting to receive an account of the conduct of the winding up. However, given that these meetings are currently rarely attended by creditors/members and that they will be provided with a progress report containing that information, it does not seem that the right to attend a meeting is one which creditors/members can reasonably expect to continue to exist.

Is the provision of constitutional significance?

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

Commencement and transitional provision

21. The amendments to sections 93 and 105 of the Act made by article 6 would come into force on 6th April 2010 but 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 12 of the draft Order.

ANNEX F

Filing requirements in non-interim order individual voluntary arrangements

Introductory

1. Individual Voluntary Arrangements ("IVAs") were an innovation introduced by the Act. An IVA is an arrangement between a debtor and his creditors for a composition in satisfaction of his debts or a scheme of arrangement of his affairs which bind any person who is a creditor of the debtor at the time of the arrangement.

2. Since their introduction, the variety and availability of credit has changed significantly. IVAs are currently sought mainly by individuals who are over indebted and whose affairs are much less complex than the group originally targeted by those arrangements. That original group was individuals with complex financial affairs or debts arising from business or from trade. Typically, current debtors are in employment and accordingly are able to offer regular payments from their income; they may also have some equity in real property.

The present position

3. IVAs are provided for in Part 8 of the Act which provides two procedures for obtaining an IVA – "slow-track" and "fast-track".

4. There are two categories within the slow-track procedure, namely with or without an order of the court (an "interim order"). An interim order imposes a moratorium which prevents creditors from taking action to enforce the debts owed to them during the currency of the order.

5. IVAs in the slow-track procedure are proposed by the debtor with the assistance of a nominee and, when the proposal is accepted by creditors, managed and supervised by a supervisor. A nominee and a supervisor must be an insolvency practitioner or a person authorised under section 389A of the Act (see below) to act in relation to such arrangements ("an authorised person")[5].

6. The fast-track procedure applies only to a debtor who is an undischarged bankrupt. The nominee and supervisor under this procedure can only be the official receiver. The fast-track procedure is rarely used.

7. Under the non-interim order slow-track IVA procedure, section 256A(3) of the Act requires the nominee, who is the insolvency practitioner or authorised person responsible for receiving a proposal for an IVA from the debtor, to submit a report to the court within 14 days of receiving a proposal from a debtor. The report must state whether the nominee

[5] There are currently no authorised persons.

considers that the proposal for an IVA has a reasonable prospect of being approved by the debtor's creditors and implemented; and accordingly whether a meeting of the debtor's creditors should be summoned, and if so, the date, time and place of the meeting.

8. In contrast to the position in interim order slow-track IVAs under section 253, the court has had no previous dealings with a debtor's proposal in a non-interim order slow-track IVA under section 256A and rarely has any dealings subsequent to the IVA being proposed or implemented. Such papers making up the report simply lie on a court file with no further action being taken on them.

9. It is only after filing the documents and the report with the court that the nominee is permitted pursuant to section 257 to inform the creditors of the proposal and summon a meeting to consider it.

10. Section 259 currently requires the chairman of the creditors' meeting called pursuant to section 257 to report the result of that meeting to the court in both interim order and non-interim order cases.

11. In the case of a fast-track IVA proposed under section 263A of the Act, there is no such requirement for a report to be made to the court at the proposal stage as there is in a non-interim order slow-track IVA. However, there is a requirement under section 263C for the approval or rejection of a fast-track IVA to be notified to the court.

The proposal

12. This proposal concerns the existing non-interim order slow-track IVA procedure and fast track voluntary arrangements. It aims to remove the obligation currently imposed by legislation on IPs , authorised persons or official receivers to file reports routinely with the court in cases in which the court has, or has had no role to play.

13. The effect of this will be to reduce an administrative and financial burden on those who administer such individual voluntary arrangements.

14. It will also contribute to the government's drive to reduce administrative burdens on HM Courts Service which is currently required to receive and store such reports.

<u>The draft Order:</u>

15. Article 8(1) of the draft Order amends section 256A of the Act so as to require the nominee to report directly to the debtor's creditors (rather than to the court), whether the proposal for an IVA has a reasonable prospect of being approved by the debtor's creditors and implemented; and accordingly whether a meeting of the debtor's creditors should be summoned, and if so, the date, time and place of the meeting.

16. Article 8(2) amends section 257 (summoning of creditors' meeting) so as to distinguish between the case in which a report is made to the court under section 256 (as it is now) and the case under section 256A, in which under the proposal no report is required to be sent to the court.

17. Article 8(3) amends section 259 so as to remove the obligation on the chairman of the meeting summoned under section 257 to report the results of the meeting of creditors to the court where no interim order has been applied for. This section encompasses both interim order proposals and non-interim order proposals. With the change to section 256A and section 257, the distinctions made there are carried through to this section so that it requires the report to be communicated to the court only in interim order cases. In the non-interim order cases, since the court has not been involved prior to the result of the meeting being known, the requirement to inform the court is removed.

18. Article 9(1) amends section 263C and 263F by requiring the Secretary of State to be notified whenever an arrangement under the fast-track procedure has been approved or rejected rather than reporting this to the court.

Consequential provisions:

19. The amendments made by Article 8(2) and (3) of the draft Order are amendments consequent to the changes made to section 256A by Article 8(1). Additionally Article 9(2) amends section 263F in consequence of the amendment to section 263C.

Transitional provisions:

20. Article 12(3) makes transitional provisions which apply to Article 8. Its effect is that the changes made by Articles 8 are not retrospective. Any proposal for a non interim order slow-track IVA made before the date on which the Order comes into force is subject to the old provisions. Art 12 (3) only concerns IVAs under s. 256A.

How does the proposal remove or reduce burdens?

21. This proposal removes the requirement to file reports with the court in non-interim order slow-track IVA procedure cases and in fast-track IVA cases. It has been noted that there is no obligation upon the court to give judicial or any consideration to the documents filed and in practice no such judicial or other consideration is given. The court merely acts as a repository for the documents.

Non-interim order slow-track IVA procedure cases

22. The proposal requires the nominee to report directly to the creditors rather than the court. In our view, it needs merely to be shown that the new arrangements for reporting to creditors will in practice be less costly or

inconvenient for the nominee than the existing requirement to report to the court.

23. It ought to be noted that in practice the nominees report is already sent to creditors so the requirement to explicitly amend the Act to require the report to be sent to creditors imposes no additional burden upon the insolvency practitioner or the authorised person. This is because with the notice of meeting that is sent to all creditors, rule 5.17(3) requires amongst other things, a copy of the proposal to be sent along with the nominees comments on the proposal which are required to be annexed to the report by r. 5.14(3).

24. The nominee must report to the creditors, since it is only the creditors who may approve, modify or reject the proposal. Therefore, it must be in the interest of the creditors to excise any step in the procedure for considering the proposal which reduces the assets available to meet their debts, to no apparent purpose.

25. The requirement to report to court generates a financial cost and administrative inconvenience for the nominee in preparing, printing and sending the report. Such costs are taken from such assets as the debtor may otherwise have available for the payment of his creditors.

26. Additionally the above process results in time delays in the processing of the voluntary arrangement which can be critical to its success.

Fast-track IVA cases

27. The proposal is secondly to remove the requirement in section 263C (which concerns the result of the creditors meeting) to report to the court whether a fast-track IVA proposal has been accepted by the creditors.

28. Currently section 263C requires the documents to be filed with the court. We consider that substituting notification to the court by a notice to the Secretary of State reduces a burden as it is less costly and inconvenient than reporting the result to the court.

29. This is because a notice sent to the Secretary of State need not be as formal as a report to the court; such a notice may be sent solely in electronic form or by electronic means, which are forms of communication not yet accepted by the court service. Service of court documents would, in any event, be subject to statutory service requirements. Responses to the consultation welcomed this change in requirement.

30. Notifying the Secretary of State will have the effect of allowing him to comply with his statutory duty to register the IVA in the Individual Insolvency Register.

31. Although adding a new burden by this requirement, we consider that such provision will result in lower costs, less administrative inconvenience and

greater returns for creditors as well as enabling greater efficiency in the processing and implementation of fast-track individual voluntary arrangements.

Consultation response

32. This proposal was one of six presented and fully explained in the consultation document "*A consultation document on proposed changes to the Individual Voluntary Arrangement (IVA) regime contained in the Insolvency Act 1986 and associated matters*". The consultation was undertaken in accordance with the provisions of section 13 of the 2006 Act and took place between 8 May and 3 August 2007. This consultation relates only to this proposal and has been referred to where relevant.

33. The other five proposals consulted on within the above document are no longer being proceeded with (see paragraph 75 of this Explanatory Document).

34. Following receipt of responses the Insolvency Service wrote to all respondents on the 8 October 2007 summarising the responses received and seeking clarification on some of the issues raised. A copy of this letter is attached to the full analysis of consultation. This resulted in 8 further responses.

35. In addition the Insolvency Service held meetings with 30 interested parties to discuss the package of proposals as a whole. Those involved were unanimous in there support for this proposal and no concerns were raised either at the meetings or in the responses to the consultation.

36. For further detail of this consultation please see Annex J.

Devolution – Scotland

37. This proposal affects individual insolvency. Individual insolvency in Scotland is devolved. The proposal therefore has no effect in Scotland.

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?

38. No. Since the burdens in this case arise directly from legislative provisions, that is to say the provisions of section 256A, 259 and 263C of the Act, they cannot be lifted by other than legislative means.

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

39. Yes. The policy objective is to ensure that creditors receive the best possible return on their debts from the debtor through less costly, more efficient and more profitable procedures and to ensure that such obligations as are imposed upon the nominee to report to the court are retained only for those cases in which the court is actively involved.

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?

40. Yes. We can identify no person who is adversely affected by these provisions.

Does the provision does remove any necessary protection?

41. No. Reporting to the court does not provide protection since the court is under no obligation to judicially consider the documentation and does not judicially consider it in practice. The only duty imposed upon the courts is a duty to receive the relevant documents.

42. The protection afforded to the debtor or any of the creditors, the nominee, the trustee in bankruptcy or the official receiver in the case of interim and non-interim order cases, is that they may challenge a creditors' meeting decision by exercising powers under section 262 of the Act or apply to have the arrangement revoked under that section. In the case of a fast-track voluntary arrangement, the equivalent parties may apply to the court under section 263F on the similar grounds for an order revoking the arrangement.

43. If the debtor or any of the creditors or any other person is not content with the actions of the nominee or the supervisor, they may make an application to the court contesting any of his actions under section 263.

44. These provisions are unaffected by the proposal and therefore to that extent we consider that no necessary protection has been removed.

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

45. No. We cannot identify any person who would be so affected. Moreover, proposing an IVA of the type affected by this proposal is not mandatory but elective.

Commencement and transitional provision

46. The amendments made to sections 256A, 257, 259 of the Act by article 8 would commence on [6th April 2010] but would not apply in respect of any proposal for an IVA made under section 256A of the Act before that date – see article 12(3) of the draft Order.

47. The amendments made to sections 263C and 263F of the Act by article 9 would apply to any proposal for an arrangement under section 263A of the Act, even if the proposal was made before the coming into force of this draft Order.

48. The reason for the difference in treatment between a proposal made under section 256A and one made under section 263A is because there is no requirement to file a copy of a report with the court prior to approval of the voluntary arrangement nor is there any scope for court involvement prior to acceptance by creditors. Notification of the Secretary of State where acceptance of the voluntary arrangement occurs after the coming into force of this draft Order, regardless of the date on which the proposal was made will not prejudice any party and will have the benefit of applying to the greatest number of such voluntary arrangements.

ANNEX G

Powers of liquidator/trustee in bankruptcy exercisable with sanction

Introductory

1. We propose to remove a requirement that is imposed upon liquidators and trustees in bankruptcy in England and Wales to obtain sanction from the liquidation or creditors committee, the creditors or the court, for a compromise in relation to the realisation of an asset that is owned by, or a debt or claim that is owed to, the company or the bankrupt.

The present position

2. Schedules 4 and 5 to the Act list various powers that a liquidator of a company or a trustee in bankruptcy may exercise in the course of his conduct of the winding up or bankruptcy, as the case may be.

3. Parts II and III of each Schedule list powers which are exercisable by the insolvency office-holder on his own authority, i.e. without the need to obtain sanction. Part I of each Schedule contains a list of powers which are only exercisable with sanction or, in other words, consent.

4. The sanction which must be obtained is[6]-

    a. in the case of a liquidator in a creditors' voluntary liquidation, the sanction of the court or the liquidation committee (or, if there is no such committee, a meeting of the company's creditors);
    b. in the case of a liquidator in a members' voluntary winding up, the sanction of an extraordinary resolution of the members of the company;
    c. in the case of a liquidator in a compulsory winding up, the sanction of the court or the liquidation committee (or, if there is no such committee, the Secretary of State); and
    d. in the case of a trustee in bankruptcy, the sanction of the court or the creditors' committee (or, if there is no such committee, the Secretary of State).

5. The liquidation or creditors' committee is a committee which may be appointed by the creditors or members in a liquidation, or the creditors in a bankruptcy. It is made up of a limited number of creditors or members of the company. The committee's role is essentially one of supervision and guidance and specifically it gives sanction where it is required and fixes the remuneration of the office-holder. It is important for the office-holder to maintain good relations with the committee and keep it informed of key developments in the proceedings. Creditors committees are usual in larger liquidations and bankruptcy cases where there are, in fact, assets to be

[6] See sections 165, 167 and 314 of the Act.

realised. Therefore it is usual for a committee to be in place where this sanction is required. In cases where a committee is established it is cheaper and quicker for the office holder to obtain sanction, rather than dealing with the whole body of creditors by holding a meeting of creditors.

6. Among the powers listed in Part I of Schedules 4 and 5 as a power requiring sanction is the power to compromise the realisation of an asset that is owned by, or a debt or claim that is owed to, the company or the bankrupt.

The proposal

7. The Insolvency Service has received representations from the insolvency profession that the requirement to obtain sanction before compromising a debt due to the insolvent estate is particularly onerous and can lead to a reduction in the amount realised. It is therefore proposed to remove the requirement for sanction as regards decisions about the settlement or compromise of claims owing to the estate as we consider that this is an area of work which could and should be left to the commercial judgement of insolvency professionals.

8. Articles 10 and 11 of the draft Order set out proposed amendments to Schedules 4 and 5 to achieve this. The amendments effectively remove certain specified powers from the list of powers exercisable with sanction and insert them instead in the list of those exercisable without sanction in the relevant Schedules.

9. The amendments to Schedule 5 (i.e. powers exercisable in a bankruptcy) have been drafted to ensure that the power to compromise claims against the trustee remains exercisable only with sanction.

How does the proposal remove or reduce burdens?

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

11. Furthermore, the need to obtain sanction can delay appropriate action being taken in relation to the assets. This can result in the value of assets diminishing, causing financial loss to the estate. The response to the consultation confirmed that creditor apathy can cause problems bringing matters to a satisfactory conclusion.

12. There is also a direct burden on the creditors in time and money spent dealing with the request. If the requirement for sanction is removed, creditors will not need to spend time deliberating a decision which ultimately the insolvency office-holder is best placed to make.

13. We acknowledge that the same arguments would apply in respect of some of the other requirements for sanction listed in Schedules 4 and 5. It was however decided that of all the requirements in Schedules 4 and 5 this was the most burdensome for office-holders and creditors. It is also something which arises more often in liquidations/bankruptcies than some of the other matters requiring sanction which arise relatively rarely.

14. The Insolvency Service has received representations from IPs about requirements for sanction more generally but it has decided to proceed with this one change alone, as there is evidence of the appropriateness of removing the burden.

Devolution – Scotland

15. The requirement for a liquidator to obtain sanction prior to the exercise of certain of his powers appears to be devolved in that it relates to the "process of winding up" and the liquidator's conduct of the winding up. There may be an argument that the requirement is reserved to the extent that the liquidator could exercise the powers with the sanction of the court (on the basis that this falls within the "powers of courts in relation to winding up proceedings" reservation). However, regardless of the merits of this argument, it would be impossible to split the exercise of the powers on this basis in any sensible way. Accordingly, it was decided to restrict the amendments to Schedule 4 to a winding up in England and Wales. The position for a winding up in Scotland will remain unchanged.

16. Schedule 5 (powers of trustee exercisable in a bankruptcy) does not extend to Scotland, which has its own system of individual insolvency. Accordingly, article 9 does not extend to Scotland.

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?

17. As the lists of powers exercisable by a liquidator or trustee with sanction are contained in Schedule 4 and 5 to the Act, the policy objective of removing the requirements for sanction in relation to compromising the realisation of assets/claims could only be achieved by amending the Act.

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

18. The underlying policy objective is to remove unnecessary administrative inconveniences and costs from insolvency proceedings. The removal of this specific requirement for an office-holder to obtain sanction is proportionate in its effect. It is a targeted measure in relation to a burden which has been identified by the insolvency profession as being particularly burdensome in their handling of individual cases. The

response to the consultation showed that this is seen as a sensible deregulatory measure.

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?

19. We do not consider that any person is adversely affected by this proposal.

20. On the face of it, the proposal removes the right of creditors/members to be consulted upon and, if considered appropriate, approve the actions of the office-holder. However, to the extent that creditors are adversely affected by this proposal, we consider that a fair balance is struck between their interests and the public interest. We believe that the benefits to creditors/members of the office-holder dealing with the asset in a speedier manner and obtaining a better realisation at a lesser cost to the estate, will prevail.

21. For the reasons stated in the following paragraphs of this Annex it is not believed that creditors will suffer as a result of this proposal. On the contrary it is considered that they will benefit from increased returns to the estate from more prompt and efficient realisations by office-holders.

Does the provision remove any necessary protection?

22. We do not believe so because there are in place other protections.

23. The provisions on sanction in the Act, which were carried forward into the Act from earlier bankruptcy and companies' legislation, were intended to provide a check on some of the activities of what was until 1986 an unregulated insolvency profession.

24. Since 1986, there have been significant developments in the operation of that regulatory regime. The need for creditors to sanction specific activities of the liquidator or trustee in this way is now considered unnecessary.

25. In their conduct of individual cases, IPs are required to seek the best possible return for the creditors and should therefore take all reasonable steps to achieve the best amount possible for assets. The need to compromise should only arise where there is some very real difficulty in realising an asset. These are commercial judgements which the office-holder is well placed to make. He will need to be able to justify his actions when he later reports to creditors on the outcome.

26. The office-holder's actions would still be transparent, as he still has to report to the creditors or members on his conduct of the case. It is also in the interests of IPs to ensure that they can adequately explain their conduct in a particular case to the creditors/members, as it is they who set the basis for the office-holder's remuneration for the work they have done and have the right to challenge at court the amount charged to a case. An

office-holder is remunerated on one of two bases: as a percentage of the assets realised and/or distributed or by reference to the time properly given in attending to the procedure. One of the factors which creditors may bear in mind when considering an office-holder's remuneration is the effectiveness with which he appears to be carrying out, or to have carried out, his duties as office-holder. It is therefore in the office-holder's financial interest to maximise the amount received for assets.

27. It should also be noted that in cases where the courts have been asked to review the conduct of insolvency office-holders, they do not stray into second-guessing their commercial judgement[7].

28. Moreover, it runs counter to the interests of creditors, in view of the cost burden it can impose upon the insolvency office-holder and the risk of losing the value of the asset as a consequence of the delays, that can result from needing to obtain sanction before the compromise can be agreed to.

29. Additionally, creditors can apply to court to seek the court's directions in relation to the exercise of the powers of the liquidator or trustee, and have remedies under the Act to seek redress against such office-holders in cases where they appear to have been guilty of any misfeasance, or in breach of any fiduciary or other duty in relation to the company.

30. This proposal received significant support from those responding to the consultation.

31. IPs were unanimous in their support.

32. Only two creditors responded as regards England and Wales: HMRC and The Institute of Credit Management.

33. HMRC initially expressed a concern as to the proposal. However, following correspondence from the Insolvency Service, they express support for the proposal but expressed a need for transparency on the part of the insolvency practitioner.

34. The Institute of Credit Management, a body whose members hold important credit-related appointments in commerce and industry, stated that their members had experience of this issue and considered sanction to be a useful process. However, a senior member was also quoted as saying that once the initial excitement for the procedure had worn off there was a general reluctance and apathy on the part of the creditors which could affect reaching closure. This accords with the experience of the Insolvency Practitioners. There is therefore doubt as to the value which creditors place on sanction.

[7] See Re Greenhaven Motors Ltd [1997] BCC 547; Re Edenote Ltd (No. 2) [1997] 2 BCLC 89.

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

35. Although the proposal would remove a right of control currently enjoyed by creditors, we do not believe that this is the removal of a right which creditors could reasonably expect to continue to enjoy, given the regulated state of the insolvency practitioners' profession; the other rights of redress/control which would still be enjoyed by creditors; and the lack of value that creditors place on the process apparent from their reported general unwillingness to take an active role in routine matters, especially after the initial stages of a case.

Is the provision of constitutional significance?

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

Commencement and transitional provision

37. The amendments made to Schedules 4 and 5 to the Act by articles 10 and 11 respectively would commence on 6th April 2010 but would not apply in respect of any proceedings under the Act which have commenced before that date – see article 12 of the draft Order.

ANNEX H

Summary: Intervention & Options

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

Available to view or download at:
http://www.insolvency.gov.uk

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

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

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

What are the policy objectives and the intended effects?

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

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

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

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? April 2013

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: 11th May 2009

Summary: Analysis & Evidence

Policy Option:	Description:

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. There will also be a reduction in insolvency office-holder in fees chargeable in relevant cases and for solicitors will all lose some income as a result of one of the proposals.
£	
Average Annual Cost (excluding one-off)	**Total Cost** (PV) **£ 32.98m**
£ 3.54m	

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

BENEFITS

ANNUAL BENEFITS	Description and scale of **key monetised benefits** by 'main affected groups'
One-off **Yr**	The main beneficiaries will be creditors of insolvent entities, by way of increased dividends being paid out by the relevant insolvency office-holder.
£ 0	
Average Annual Benefit (excluding one-off)	**Total Benefit** (PV) **£ 106.2m**
£ 11.4m	

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

Key Assumptions/Sensitivities/Risks

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

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

What is the geographic coverage of the policy/option?	England and
On what date will the policy be implemented?	6 April 2010
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?			N/A	
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)					(Decrease)
Increase	**£ 12.21 m**	Decreas	**£ 5.15m**	**Net**	**£ 7.06m**

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

Evidence Base (for summa

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Summary

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

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

Introduction to the proposals

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

4. **The Rules have been amended many times and a decision was therefore taken in 2005 to consolidate these Rules, to make them more accessible to users. At the same time, we decided to take the opportunity to modernise some of the procedures involved and to remove unnecessary requirements. The changes we propose in this LRO are central to the aim of modernising insolvency legislation and reducing the burdens of that legislation.**

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

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

   - **Insolvency practitioners are members of a regulated profession. Authorisation of insolvency practitioners was introduced in 1986 and is now well embedded. We consider that it is appropriate now to allow more discretion to insolvency**

practitioners, who are experienced members of a regulated profession, in some very specific areas of their work.

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

Options for achieving policy intention

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

(a) Do nothing

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

(b) Issue guidance

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

(c) Make changes to the Rules only

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

(d) Make change by LRO

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

COSTS AND BENEFITS – GENERAL REMARKS

COSTS

Familiarisation for users of insolvency law

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

9. **We consider that the costs of familiarisation for individual insolvency practitioners will be minimal for these reasons:**

- **The Insolvency Service will inform the insolvency profession of the changes through its regular "Dear IP" newsletter, which is sent to all insolvency practitioners, to notify them of the changes;**

- **The insolvency profession regularly budget for staff training and development and the costs of absorbing the implications of these proposals could be incorporated into existing budgets without significant additional costs;**

- **Members of the insolvency profession are under an obligation to keep themselves up to date on developments in their specialist field for CPD (Continuing Professional Development);**

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

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

BENEFITS

General comments concerning the estimation of benefits

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

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

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

Who will benefit?

Creditors of insolvent estates

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

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

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

16. **So far as the creditors themselves are concerned, there are broadly three categories and a legal order of priority of payment- secured,**

preferential and unsecured. However, for the avoidance of doubt when considering this Impact Assessment, it should be borne in mind that the only preferential creditors are claims in respect of employees and that unpaid taxes can no longer be claimed preferentially. All unsecured creditors (which includes trade creditors) are treated equally amongst themselves.

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

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

Insolvency practitioners

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

Courts

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

CONSULTATIONS AND OUTCOME IN RELATION TO PROPOSALS

21. **The proposals dealt with in this draft LRO arise from two separate consultation exercises. Further detail are given in paragraphs 64 to 72 of the Explanatory Document.**

THE PROPOSALS BEING TAKEN FORWARD IN THIS LRO

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

- Attendance at Meetings – see pages 9 to 10
- Use of websites – see pages 11 to 13

- References to “writing” and “post” - see page 14
- Affidavits – see pages 15 to 16
- Annual Meetings – see pages 17 to 18
- Filing requirements in non-interim order individual voluntary arrangements – see pages 19 to 20
- Powers of liquidator/trustee in bankruptcy exercisable with sanction – see pages 21 to 22

23. **A summary of the estimated savings that will result from each of these proposals is as follows. These savings are explained more fully in paragraphs 25 to 93 below.**

Summary of Savings as a result of changes in this LRO			
	Benefits (£)	**Costs (£)**	**Net Benefit (£)(Rounded figure)**
Flexible Meetings	426,307	Nil	426,307
			(£0.4m)
Websites	4,155,250	3,543,000	612,250
			(£0.6m)
Affidavits	106,170	Nil	106,170
			(£0.1m)
Annual Meetings	5,189,640	Nil	5,189,640
			(£5.2m)
Removing requirements for filing in court in some IVAs	324,000	Nil	324,000
			(£0.3m)
Sanction	1,195,400	Nil	1,195,400
			(£1.2m)
TOTALS	**11,396,767**	**3,543,000**	**7,853,767**
			(£7.8m)

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

Attendance at Meetings

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

Background

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

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

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

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

Costs and benefits

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

Insolvency procedure	Projected number of cases in 2009/10	Number of meetings per case with creditors or members in 2009/10[8]	Total meetings	% of total meetings in which electronic meeting provision used	Average Savings per meeting[9]	Total saving from electronic meetings
					£	£
CVL	16,000	1.875[10]	30,000	2%	350	210,000
Compulsory Winding up	10,000	0.25	2,500	2%	350	17,500
Administrations	7,000	0.6	4,200	2%	350	29,400
Administrative Receivership	750	1	750	2%	350	5,250
CVA	600	1	600	2%	350	4,200
MVL	2,600	0	-	0%	-	-
Bankruptcy	72,900	0.19	13,851	2%	350	96,957
IVA	45,000	0.2	9,000	2%	350	63,000
TOTAL	**154,850**		**60901**			**426,307**

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

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

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

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

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

Use of websites

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

Background

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

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

Costs and benefits

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

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

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

Insolvency procedure	No. of cases[11]	% of cases in which websites will be used[12]	No. of cases in which websites used	Creditors/ members per case[13]	Times creditors/members written to[14]	No. of items posted on website	Savings per website communication[15]	Total savings
							£	£
CVL	16,000	10%	1600	35	8	4	2.0	448,000
Comp Winding up	10,000	0%	0	25	3	0	1.0	[16]0
Administration	7,000	30%	2100	60	5	3	3.0	1,134,000
Administrative Receivership	750	10%	75	35	2	1	2.0	5,250
CVA	600	30%	180	35	8	4	3.0	75,600
MVL	2,600	10%	260	60	5	2	2.0	62,400
Bankruptcy	72,900	0%	0	15	4	-	1.0	-
IVA	45,000	30%	13500	15	8	4	3.0	2,430,000
TOTAL	**154,850**		**17,715**					**4,155,250**
			Less capital cost of £200 per case for managing websites					**(3,543,000)**
							TOTAL	**612,250**

Note

2. No savings are anticipated

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

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

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

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

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

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

[16]

References to "writing" and "post"

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

Background

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

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

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

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

Costs and benefits

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

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

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

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

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

Affidavits

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

Background

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

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

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

Costs and benefits

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

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

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

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

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

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

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

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

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

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

Annual meetings

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

Background

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

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

Costs and Benefits

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

	RELEVANT ESTIMATES FOR 2010/11	**COST OF MEETING**	**ESTIMATED TOTAL SAVINGS**
MVLs (section 93)	2,600[17]		
Number of MVLs that last more than 12 months and therefore at present require a meeting (10%)	260	£354	£92,040
CVLs (section 105)	16,000[18]		
Number of CVLs that last more than 12 months and therefore at present require a meeting (90%)	14,400	£354	£5,097,600
TOTAL SAVINGS			**£5,189,640**

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

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

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

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

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

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

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

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

Background

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

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

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

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

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

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

Costs and benefits

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

79. The projected number of IVAs for 2010/11 is 45,000, of which at least 80% are expected to be non-interim order IVAs and therefore fall into the category affected by the proposed

change. It is estimated that the cost of filing these reports at court amount to £4.50 per case due to the extensive amount of information that is required to be sent.

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

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

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

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

Powers of liquidator/trustee in bankruptcy exercisable with sanction

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

Background

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

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

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

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

Costs and benefits

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

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

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

	Total cases	Cost per sanction	Total Cost
Schedule 4, Part I (Liquidation)	**16,000**[19] **2,000**[20] **Total 18,000**		
Estimated % of cases where sanction required	**10%**		
Estimated number of cases where sanction required	**1,800**		
Committee (in est. 90% of cases)	**1,620**	**£500 per sanction**	£810,000
No Committee (in est. 10%)	**180**	**£600 per sanction**	£108,000
Total			£918,000
Schedule 5, Part I (Bankruptcy)	**10,880**		
Estimated % of cases where sanction required	**5%**		
Estimated number of cases where sanction required	**544**		
Committee (in est. 90% of cases)	**490**	**£500 per sanction**	£245,000
No Committee (in est. 10%)	**54**	**£600 per sanction**	£32,400
Total			**£277,400**
OVERALL TOTAL SAVINGS			**£1,195,400**

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

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

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

SPECIFIC IMPACT TESTS

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

Competition Filter and Reasoning

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

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

95. All insolvency practitioners must be licensed to act as such; they may operate as sole practitioners or within firms of varying size dealing solely with insolvency work. Many also operate within firms of accountants or solicitors. A licensed insolvency practitioner can take appointments in any type of insolvency procedure, although some specialise, for example concentrating mainly on corporate insolvency work.

96. The market is characterised by lots of firms of varying size offering in essence the same product, which is the professional services of a licensed insolvency practitioner as an insolvency office-holder. There are no large firms serving a large proportion of the market.

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

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

Small Firms Impact Test

99. The Competition Assessment already explores whether the costs of these proposals would have a particular impact on small firms of insolvency practitioners and concludes that they would not.

100. These proposals would bring no costs to small businesses or the voluntary sector as creditors. So far as the benefits of the proposals to creditors are concerned, they would all benefit from any increase in payment to the creditors in proportion to the amount they are owed.

Legal Aid Impact Test

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

Sustainable Development

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

Carbon Assessment

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

Other Environment

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

Health Assessment

105. There are no health implications to these proposals.

Equality Impact Assessments

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

Human Rights

107. The consultation paper sets out the pre-conditions to the making of a LRO and in particular asks consultees to consider, in relation to each proposal, whether it meets the following pre-conditions:

- Whether the proposals are proportionate to the policy objectives
- Whether the proposals strike a fair balance between the public interest and the interest of any person adversely affected by the LRO
- That it does not remove any necessary protections
- That it will not prevent any person from continuing to exercise any right or freedom which they might reasonably expect to continue to exercise

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

Rural Proofing

109. There are no direct implications for rural proofing tests.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	No	No
Rural Proofing	No	No

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

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

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

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

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

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

ANNEX I

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

Enquiries Alison.Parine@insolvency.gsi.gov.uk

Alison Parine
The Insolvency Service
21 Bloomsbury Street
London
WC1B 3QW

Telephone 0207 637 6365

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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.

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.**

<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 J - Details of IVA consultation exercise

This proposal was the subject of extensive consultation and is based on the recommendations of a stakeholder-working group which published its suggestions for the reform of IVAs in a document *"Improving Individual Voluntary Arrangements"* published in July 2005 by The Insolvency Service. The consultation ran for over 12 weeks and closed on 7 October 2005.

In March 2006 The Insolvency Service published "*Improving Individual Voluntary Arrangements - Summary of responses and Government Reply*".

Following the suggestions that had been raised in the above consultation, on the 8 May 2007 the Insolvency Service issued the consultation paper in accordance with s. 13 of the 2006 Act entitled "*A consultation document on proposed changes to the Individual Voluntary Arrangement (IVA) regime contained in the Insolvency Act 1986 and associated matters*". The consultation ran for just over twelve weeks until 3 August 2007. Its details remained on The Insolvency Service website throughout that period. The consultee list is annexed to the consultation document..

Copies of the consultation paper, including a list of consultees, were made available to the Parliamentary Scrutiny Committees at the time. Electronic versions of all the consultation documents were published at:

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

Paper copies were available and a further 20 copies were sent to interested parties by The Insolvency Service Policy Unit.

A total of 59 formal responses were received to the consultation..

As a result of the responses received, the Insolvency Service wrote a letter dated 8 October 2007 to all respondents setting out a summary of the responses and seeking clarification of certain issues and seeking comment on the clarification. This elicited a further 8 responses. None of which refer to this particular proposal.

In addition to this the Insolvency Service had meetings with 30 interested parties, which shaped the content of the current proposal.

A summary of the responses to this particular proposal are set out below:

Reduced filing of papers in court in non interim order IVAs:

We asked whether consultees had support in principle for reduced filing of papers at court. The responses were as set out below.

Support for the proposal	**YES**	**YES- WITH RESERVATION**	**NO**	**DON'T KNOW - NO COMMENT**
Creditors	11			5
Debt Advice	2			
Insolvency practitioners/IVA providers	20			
Interest groups	11			1
Other	8		1	
TOTAL	**52**		**1**	**6**

This proposal therefore met with widespread support**.**

Two respondents were concerned that this proposal reduced the necessary protections.

One respondent indicated their concern that the proposal prevented the continuation of exercising a current right or freedom.

Respondents showed strong support for the view that this proposal does not restrict existing rights and freedoms.

We asked the consultees for their views on the costs and savings as identified in this consultation document and addressed in the draft Regulatory Impact Assessment. A large number of views were expressed:

RESPONDENTS	**YES**	**NO**	**DON'T KNOW – NO COMMENT**
Creditors	8	6	2
Debt Advice	2		
Insolvency practitioners/IVA providers	14	5	1
Interest groups	3	4	5
Other	7	1	1
TOTAL	**34**	**16**	**9**

Views expressed include:

- *"Cost saving would be enormous (in some cases)"* (Geoffrey Kirk)
- *"Court will benefit significantly."* And *"Minimal cost saving to IP/Debtor as filing papers at court has become so routine."* (Bridgestones)
- *"This proposal will reduce the burden of costs on IPs [Insolvency Practitioners] and that should have a positive impact on the dividends payable to creditors"* (CCUA)
- *"Yes - should increase the contributions to the IVA while removing some of the administrative burden from the IP"* (HBOS)

ANNEX K

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

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

(changes shown in bold)
(changes show in red bold are changes occasioned by Legislative Reform (Insolvency) (Advertising Requirements) Order 2009)

47 Statement of affairs to be submitted

(1) Where an administrative receiver is appointed, he shall forthwith require some or all of the persons mentioned below to make out and submit to him a statement in the prescribed form as to the affairs of the company.

(2) A statement submitted under this section shall be verified by **a statement of truth** by the persons required to submit it and shall show—

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

(b) the names and addresses of its 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.

(3) The persons referred to in subsection (1) are—

(a) those who are or have been officers of the company;

(b) those who have taken part in the company's formation at any time within one year before the date of the appointment of the administrative receiver;

(c) those who are in the company's employment, or have been in its employment within that year, and are in the administrative receiver's opinion capable of giving the information required;

(d) those who are or have been within that year officers of or in the employment of a company which is, or within that year was, an officer of the company.

In this subsection “employment” includes employment under a contract for services.

(4) Where any persons are required under this section to submit a statement of affairs to the administrative receiver, they shall do so (subject to the next subsection) before the end of the period of 21 days beginning with the day after that on which the prescribed notice of the requirement is given to them by the administrative receiver.

(5) The administrative receiver, if he thinks fit, may—

(a) at any time release a person from an obligation imposed on him under subsection (1) or (2), or

(b) either when giving notice under subsection (4) or subsequently, extend the period so mentioned;

and where the administrative receiver has refused to exercise a power conferred by this subsection, the court, if it thinks fit, may exercise it.

(6) If a person without reasonable excuse fails to comply with any obligation imposed under this section, he is liable to a fine and, for continued contravention, to a daily default fine.

NOTES
Derivation

This section derived from the Insolvency Act 1985, s 53.

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.

PART IV

Chapter III
Members' Voluntary Winding Up

91 Appointment of liquidator

(1) In a members' voluntary winding up, the company in general meeting shall appoint one or more liquidators for the purpose of winding up the company's affairs and distributing its assets.

(2) On the appointment of a liquidator all the powers of the directors cease, except so far as the company in general meeting or the liquidator sanctions their continuance.

NOTES
Derivation

This section derived from the Companies Act 1985, s 580.

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.

92 Power to fill vacancy in office of liquidator

(1) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(3) The meeting shall be held in manner provided by this Act or by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the court.

NOTES
Derivation

This section derived from the Companies Act 1985, s 581.

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.

93 General company meeting at each year's end **(Scotland)**

(1) Subject to sections 96 and 102, in the event of the winding up **of a company registered in Scotland** continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within 3 months from the end of the year or such longer period as the Secretary of State may allow.

(2) The liquidator shall lay before the meeting an account of his acts and dealings, and of the conduct of the winding up, during the preceding year.

(3) If the liquidator fails to comply with this section, he is liable to a fine.

NOTES
Derivation

This section derived from the Companies Act 1985, s 584, and the Insolvency Act 1985, Sch 6, para 36.

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.

94 Final meeting prior to dissolution

(1) As soon as the company's affairs are fully wound up, the liquidator shall make up an account of the winding up, showing how it has been conducted and the company's property has been disposed of, and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving an explanation of it.

(2) The meeting shall be called by advertisement in the Gazette, specifying its time, place and object and published at least one month before the meeting.

(3) Within one week after the meeting, the liquidator shall send to the registrar of companies a copy of the account, and shall make a return to him of the holding of the meeting and of its date.

(4) If the copy is not sent or the return is not made in accordance with subsection (3), the liquidator is liable to a fine and, for continued contravention, to a daily default fine.

(5) If a quorum is not present at the meeting, the liquidator shall, in lieu of the return mentioned above, make a return that the meeting was duly summoned and that no quorum was present; and upon such a return being made, the provisions of subsection (3) as to the making of the return are deemed complied with.

(6) If the liquidator fails to call a general meeting of the company as required by subsection (1), he is liable to a fine.

NOTES
Derivation

This section derived from the Companies Act 1985, s 585(1)–(4), (7).

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.
Anything directed to be done, or which may be done, to or by the registrar of companies in Scotland by virtue of sub-s (3) above, or the assistant registrar of friendly societies for Scotland by virtue of that subsection as applied in relation to friendly societies, industrial and provident societies or building societies, shall, or (as the case may be) may, also be done to or by the Accountant in Bankruptcy: see the Scotland Act 1998, s 125, Sch 8, para 23(2), (3).
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.

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

(d) 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 (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 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.

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

(a) in the case of a winding up of a company registered in England and Wales, by a statement of truth; and

(b) in the case of a winding up of a company registered in Scotland, by affidavit.

(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).

96 Conversion to creditors' voluntary winding up

As from the day on which the creditors' meeting is held under section 95, this Act has effect as if—

(a) the directors' declaration under section 89 had not been made; and

(b) the creditors' meeting and the company meeting at which it was resolved that the company be wound up voluntarily were the meetings mentioned in section 98 in the next Chapter;

and accordingly the winding up becomes a creditors' voluntary winding up.

NOTES
Derivation

This section derived from the Insolvency Act 1985, s 83(7) (in part).

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 IV
Creditors' Voluntary Winding Up

97 Application of this Chapter

(1) Subject as follows, this Chapter applies in relation to a creditors' voluntary winding up.

(2) Sections 98 and 99 do not apply where, under section 96 in Chapter III, a members' voluntary winding up has become a creditors' voluntary winding up.

NOTES
Derivation

This section derived from the Companies Act 1985, s 587, and the Insolvency Act 1985, s 85(1).

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 (Scotland) Regulations 2001, SSI 2001/128 regulate LLPs by applying to them, with modifications, the appropriate provisions of this Act: see SSI 2001/128, regs 4, 6, Sch 2.

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 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; 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.

99 Directors to lay statement of affairs before creditors

(1) The directors of the company **…** shall—

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

(b) cause that statement to be laid before the creditors' meeting under section 98; and

(c) appoint one of their number to preside at that meeting;

and it is the duty of the director so appointed to attend the meeting and preside over it.

(2) 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.

(2A) The statement as to the affairs of the company shall be verified by some or all of the directors—

(a) in the case of a winding up of a company registered in England and Wales, by a statement of truth; and

(b) in the case of a winding up of a company registered in Scotland, by affidavit.

(3) If—

(a) the directors without reasonable excuse fail to comply with subsection (1)**, (2) or (2A)**; or

(b) any director without reasonable excuse fails to comply with subsection (1), so far as requiring him to attend and preside at the creditors' meeting,

the directors are or (as the case may be) the director is guilty of an offence and liable to a fine.

NOTES
Derivation

This section derived from the Insolvency Act 1985, s 85(4), (5), (9)(b), (c), (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.

100 Appointment of liquidator

(1) The creditors and the company at their respective meetings mentioned in section 98 may nominate a person to be liquidator for the purpose of winding up the company's affairs and distributing its assets.

(2) The liquidator shall be the person nominated by the creditors or, where no person has been so nominated, the person (if any) nominated by the company.

(3) In the case of different persons being nominated, any director, member or creditor of the company may, within 7 days after the date on which the nomination was made by the creditors, apply to the court for an order either—

(a) directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or

(b) appointing some other person to be liquidator instead of the person nominated by the creditors.

[(4) The court shall grant an application under subsection (3) made by the holder of a qualifying floating charge in respect of the company's property (within the meaning of paragraph 14 of Schedule B1) unless the court thinks it right to refuse the application because of the particular circumstances of the case.]

NOTES
Derivation

This section derived from the Companies Act 1985, s 589, and the Insolvency Act 1985, Sch 6, para 37(1), (2).

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 (4): inserted by the Enterprise Act 2002, s 248(3), Sch 17, paras 9, 14; for effect see s 249, Sch 17, para 1 thereto.

Date in force: to be appointed: see the Enterprise Act 2002, s 279.

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 appointment of a liquidator, by the Credit Institutions (Reorganisation and Winding up) Regulations 2004, SI 2004/1045, reg 9(3), (5).

101 Appointment of liquidation committee

(1) The creditors at the meeting to be held under section 98 or at any subsequent meeting may, if they think fit, appoint a committee ("the liquidation committee") of not more than 5 persons to exercise the functions conferred on it by or under this Act.

(2) If such a committee is appointed, the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee, not exceeding 5.

(3) However, the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the liquidation committee; and if the creditors so resolve—

(a) the persons mentioned in the resolution are not then, unless the court otherwise directs, qualified to act as members of the committee; and

(b) on any application to the court under this provision the court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(4) In Scotland, the liquidation committee has, in addition to the powers and duties conferred and imposed on it by this Act, such of the powers and duties of commissioners on a bankrupt estate as may be conferred and imposed on liquidation committees by the rules.

NOTES
Derivation

This section derived from the Companies Act 1985, s 590, and the Insolvency Act 1985, Sch 6, para 38(2)–(4).

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.

102 Creditors' meeting where winding up converted under s 96

Where, in the case of a winding up which was, under section 96 in Chapter III, converted to a creditors' voluntary winding up, a creditors' meeting is held in accordance with section 95, any appointment made or committee established by that meeting is deemed to have been made or established by a meeting held in accordance with section 98 in this Chapter.

NOTES
Derivation

This section derived from the Insolvency Act 1985, s 83(7) (in part).

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 (Scotland) Regulations 2001, SSI 2001/128 regulate LLPs by applying to them, with modifications, the appropriate provisions of this Act: see SSI 2001/128, regs 4, 6, Sch 2.

103 Cesser of directors' powers

On the appointment of a liquidator, all the powers of the directors cease, except so far as the liquidation committee (or, if there is no such committee, the creditors) sanction their continuance.

NOTES
Derivation

This section derived from the Companies Act 1985, s 591(2), and the Insolvency Act 1985, Sch 6, para 39.

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.

104 Vacancy in office of liquidator

If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator (other than a liquidator appointed by, or by the direction of, the court) the creditors may fill the vacancy.

NOTES
Derivation

This section derived from the Companies Act 1985, s 592.

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 (Scotland) Regulations 2001, SSI 2001/128 regulate LLPs by applying to them, with modifications, the appropriate provisions of this Act: see SSI 2001/128, regs 4, 6, Sch 2.

105 Meetings of company and creditors at each year's end **(Scotland)**

(1) If the winding up **of a company registered in Scotland** continues for more than one year, the liquidator shall summon a general meeting of the company and a meeting of the creditors at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within 3 months from the end of the year or such longer period as the Secretary of State may allow.

(2) The liquidator shall lay before each of the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(3) If the liquidator fails to comply with this section, he is liable to a fine.

(4) Where under section 96 a members' voluntary winding up has become a creditors' voluntary winding up, and the creditors' meeting under section 95 is held 3 months or less before the end of the first year from the commencement of the winding up, the liquidator is not required by this section to summon a meeting of creditors at the end of that year.

NOTES
Derivation

This section derived from the Companies Act 1985, s 594, and the Insolvency Act 1985, s 83(8).

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.

106 Final meeting prior to dissolution

(1) As soon as the company's affairs are fully wound up, the liquidator shall make up an account of the winding up, showing how it has been conducted and the company's property has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors for the purpose of laying the account before the meetings and giving an explanation of it.

(2) Each such meeting shall be called by advertisement in the Gazette specifying the time, place and object of the meeting, and published at least one month before it.

(3) Within one week after the date of the meetings (or, if they are not held on the same date, after the date of the later one) the liquidator shall send to the registrar of companies a copy of the account, and shall make a return to him of the holding of the meetings and of their dates.

(4) If the copy is not sent or the return is not made in accordance with subsection (3), the liquidator is liable to a fine and, for continued contravention, to a daily default fine.

(5) However, if a quorum is not present at either such meeting, the liquidator shall, in lieu of the return required by subsection (3), make a return that the meeting was duly summoned and that no quorum was present; and upon such return being made the provisions of that subsection as to the making of the return are, in respect of that meeting, deemed complied with.

(6) If the liquidator fails to call a general meeting of the company or a meeting of the creditors as required by this section, he is liable to a fine.

NOTES
Derivation

This section derived from the Companies Act 1985, s 595(1)–(5), (8).

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.
Anything directed to be done, or which may be done, to or by the registrar of companies in Scotland by virtue of sub-s (3) or (5) above, or the assistant registrar of friendly societies for Scotland by virtue of those subsections as applied in relation to friendly societies, industrial and provident societies or building societies, shall, or (as the case may be) may, also be done to or by the Accountant in Bankruptcy: see the Scotland Act 1998, s 125, Sch 8, para 23(2), (3).
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.

Investigation procedures

131 Company's statement of affairs

(1) Where the court has made a winding-up order or appointed a provisional liquidator, the official receiver may require some or all of the persons mentioned in subsection (3) below to make out and submit to him a statement in the prescribed form as to the affairs of the company.

(2) The statement 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 or as the official receiver may require.

(2A) The statement shall be verified by the persons required to submit it—

(a) in the case of an appointment of a provisional liquidator or a winding up by the court in England and Wales, by a statement of truth; and

(b) in the case of an appointment of a provisional liquidator or a winding up by the court in Scotland, by affidavit.

(3) The persons referred to in subsection (1) are—

(a) those who are or have been officers of the company;

(b) those who have taken part in the formation of the company at any time within one year before the relevant date;

(c) those who are in the company's employment, or have been in its employment within that year, and are in the official receiver's opinion capable of giving the information required;

(d) those who are or have been within that year officers of, or in the employment of, a company which is, or within that year was, an officer of the company.

(4) Where any persons are required under this section to submit a statement of affairs to the official receiver, they shall do so (subject to the next subsection) before the end of the period of 21 days beginning with the day after that on which the prescribed notice of the requirement is given to them by the official receiver.

(5) The official receiver, if he thinks fit, may—

(a) at any time release a person from an obligation imposed on him under subsection (1) or (2) above; or

(b) either when giving the notice mentioned in subsection (4) or subsequently, extend the period so mentioned;

and where the official receiver has refused to exercise a power conferred by this subsection, the court, if it thinks fit, may exercise it.

(6) In this section—

“employment” includes employment under a contract for services; and

“the relevant date” means—

(a) in a case where a provisional liquidator is appointed, the date of his appointment; and

(b) in a case where no such appointment is made, the date of the winding-up order.

(7) If a person without reasonable excuse fails to comply with any obligation imposed under this section, he is liable to a fine and, for continued contravention, to a daily default fine.

(8) In the application of this section to Scotland references to the official receiver are to the liquidator or, in a case where a provisional liquidator is appointed, the provisional liquidator.

NOTES
Derivation

This section derived from the Insolvency Act 1985, s 66.

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 (Scotland) Regulations 2001, SSI 2001/128 regulate LLPs by applying to them, with modifications, the appropriate provisions of this Act: see SSI 2001/128, regs 4, 6, Sch 2.

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)**, (2) or (2A)** 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.

236 Inquiry into company's dealings, etc

(1) This section applies as does section 234; and it also applies in the case of a company in respect of which a winding-up order has been made by the court in England and Wales as if references to the office-holder included the official receiver, whether or not he is the liquidator.

(2) The court may, on the application of the office-holder, summon to appear before it—

(a) any officer of the company,

(b) any person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or

(c) any person whom the court thinks capable of giving information concerning the promotion, formation, business, dealings, affairs or property of the company.

(3) The court may require any such person as is mentioned in subsection (2)(a) to (c) to submit **to the court** an account of his dealings with the company or to produce any books,

papers or other records in his possession or under his control relating to the company or the matters mentioned in paragraph (c) of the subsection.

(3A) An account submitted to the court under subsection (3) must be contained in—

(a) a witness statement verified by a statement of truth (in England and Wales), and

(b) an affidavit (in Scotland).

(4) The following applies in a case where—

(a) a person without reasonable excuse fails to appear before the court when he is summoned to do so under this section, or

(b) there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding his appearance before the court under this section.

(5) The court may, for the purpose of bringing that person and anything in his possession before the court, cause a warrant to be issued to a constable or prescribed officer of the court—

(a) for the arrest of that person, and

(b) for the seizure of any books, papers, records, money or goods in that person's possession.

(6) The court may authorise a person arrested under such a warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until that person is brought before the court under the warrant or until such other time as the court may order.

NOTES
Derivation

This section derived from the Insolvency Act 1985, ss 95(1), (2), 100(1), (2), (6).

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 (Scotland) Regulations 2001, SSI 2001/128 regulate LLPs by applying to them, with modifications, the appropriate provisions of this Act: see SSI 2001/128, regs 4, 6, Sch 2.

246A Remote attendance at meetings

(1) Subject to subsection (2), this section applies to—

(a) any meeting of the creditors of a company summoned under this Act or the rules, or

(b) any meeting of the members or contributories of a company summoned by the office-holder under this Act or the rules, other than a meeting of the members of a company in a members' voluntary winding up.

(2) This section does not apply where—

(a) a company is being wound up in Scotland, or

(b) a receiver is appointed under section 51 in Chapter 2 of Part 3.

(3) Where the person summoning a meeting ("the convener") considers it appropriate, the meeting may be conducted and held in such a way that persons who are not present together at the same place may attend it.

(4) Where a meeting is conducted and held in the manner referred to in subsection (3), a person attends the meeting if that person is able to exercise any rights which that person may have to speak and vote at the meeting.

(5) For the purposes of this section—

(a) a person is able to exercise the right to speak at a meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting; and

(b) a person is able to exercise the right to vote at a meeting when—

(i) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting, and
(ii) that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.

(6) The convener of a meeting which is to be conducted and held in the manner referred to in subsection (3) shall make whatever arrangements the convener considers appropriate to—

(a) enable those attending the meeting to exercise their rights to speak or vote, and

(b) ensure the identification of those attending the meeting and the security of any electronic means used to enable attendance.

(7) Where in the reasonable opinion of the convener—

(a) a meeting will be attended by persons who will not be present together at the same place, and

(b) it is unnecessary or inexpedient to specify a place for the meeting,

any requirement under this Act or the rules to specify a place for the meeting may be satisfied by specifying the arrangements the convener proposes to enable persons to exercise their rights to speak or vote.

(8) In making the arrangements referred to in subsection (6) and in forming the opinion referred to in subsection (7)(b), the convener must have regard to the legitimate interests

of the creditors, members or contributories and others attending the meeting in the efficient despatch of the business of the meeting.

(9) If—

(a) the notice of a meeting does not specify a place for the meeting,

(b) the convener is requested in accordance with the rules to specify a place for the meeting, and

(c) that request is made—

(i) in the case of a meeting of creditors or contributories, by not less than ten percent in value of the creditors or contributories, or

(ii) in the case of a meeting of members, by members representing not less than ten percent of the total voting rights of all the members having at the date of the request a right to vote at the meeting,

it shall be the duty of the convener to specify a place for the meeting.

(10) In this section, "the office-holder", in relation to a company, means—

(a) its liquidator, provisional liquidator, administrator, or administrative receiver, or

(b) where a voluntary arrangement in relation to the company is proposed or has taken effect under Part 1, the nominee or the supervisor of the voluntary arrangement.

246B Use of websites

(1) Subject to subsection (2), where any provision of this Act or the rules requires the office-holder to give, deliver, furnish or send a notice or other document or information to any person, that requirement is satisfied by making the notice, document or information available on a website—

(a) in accordance with the rules, and

(b) in such circumstances as may be prescribed.

(2) This section does not apply where—

(a) a company is being wound up in Scotland, or

(b) a receiver is appointed under section 51 in Chapter 2 of Part 3.

(3) In this section, "the office-holder" means—

(a) the liquidator, provisional liquidator, administrator, or administrative receiver of a company, or

(b) where a voluntary arrangement in relation to a company is proposed or has taken effect under Part 1, the nominee or the supervisor of the voluntary arrangement.

Part VIII Individual Voluntary Arrangements
Moratorium for insolvent debtor

252 Interim order of court

(1) In the circumstances specified below, the court may in the case of a debtor (being an individual) make an interim order under this section.

(2) An interim order has the effect that, during the period for which it is in force—

(a) no bankruptcy petition relating to the debtor may be presented or proceeded with,

[(aa) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises let to the debtor in respect of a failure by the debtor to comply with any term or condition of his tenancy of such premises, except with the leave of the court] and

(b) no other proceedings, and no execution or other legal process, may be commenced or continued [and no distress may be levied] against the debtor or his property except with the leave of the court.

NOTES
Derivation

This section derived from the Insolvency Act 1985, s 112(1) (in part), (3).
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.
Extent

This section does not extend to Scotland: see s 440(2)(b).
Amendment

Sub-s (2): para (aa) inserted by the Insolvency Act 2000, s 3, Sch 3, paras 1, 2(a).

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

Sub-s (2): in para (b) words “and no distress may be levied” in square brackets inserted by the Insolvency Act 2000, s 3, Sch 3, paras 1, 2(b).

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

253 Application for interim order

(1) Application to the court for an interim order may be made where the debtor intends to make a proposal [under this Part, that is, a proposal] to his creditors for a composition in satisfaction of his debts or a scheme of arrangement of his affairs (from here on referred to, in either case, as a “voluntary arrangement”).

(2) The proposal must provide for some person (“the nominee”) to act in relation to the voluntary arrangement either as trustee or otherwise for the purpose of supervising its implementation [and the nominee must be a person who is qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement].

(3) Subject as follows, the application may be made—

(a) if the debtor is an undischarged bankrupt, by the debtor, the trustee of his estate, or the official receiver, and

(b) in any other case, by the debtor.

(4) An application shall not be made under subsection (3)(*a*) unless the debtor has given notice of [the proposal] to the official receiver and, if there is one, the trustee of his estate.

(5) An application shall not be made while a bankruptcy petition presented by the debtor is pending, if the court has, under section 273 below, appointed an insolvency practitioner to inquire into the debtor's affairs and report.

NOTES
Derivation

This section derived from the Insolvency Act 1985, ss 110, 111(1), (2), (3) (in part).
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.
Extent

This section does not extend to Scotland: see s 440(2)(b).
Amendment

Sub-s (1): words “under this Part, that is, a proposal” in square brackets inserted by the Insolvency Act 2000, s 3, Sch 3, paras 1, 3(a).

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

Sub-s (2): words from “and the nominee” to “the voluntary arrangement” in square brackets inserted by the Insolvency Act 2000, s 3, Sch 3, paras 1, 3(b).

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

Sub-s (4): words “the proposal” in square brackets substituted by the Insolvency Act 2000, s 3, Sch 3, paras 1, 3(c).

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

254 Effect of application

(1) At any time when an application under section 253 for an interim order is pending,

[(a) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises let to the debtor in respect of a failure by the debtor to comply with any term or condition of his tenancy of such premises, except with the leave of the court, and

(b)] the court may [forbid the levying of any distress on the debtor's property or its subsequent sale, or both, and] stay any action, execution or other legal process against the property or person of the debtor.

(2) Any court in which proceedings are pending against an individual may, on proof that an application under that section has been made in respect of that individual, either stay the proceedings or allow them to continue on such terms as it thinks fit.

NOTES
Derivation

This section derived from the Insolvency Act 1985, s 111(4), (5).
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.
Extent

This section does not extend to Scotland: see s 440(2)(b).
Amendment

Sub-s (1): para (a) and subsequent reference to “(b)” inserted by the Insolvency Act 2000, s 3, Sch 3, paras 1, 4(a).

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

Sub-s (1): in para (b) words “forbid the levying of any distress on the debtor's property or its subsequent sale, or both, and” in square brackets inserted by the Insolvency Act 2000, s 3, Sch 3, paras 1, 4(b).

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

255 Cases in which interim order can be made

(1) The court shall not make an interim order on an application under section 253 unless it is satisfied—

(a) that the debtor intends to make [a proposal under this Part];

(b) that on the day of the making of the application the debtor was an undischarged bankrupt or was able to petition for his own bankruptcy;

(c) that no previous application has been made by the debtor for an interim order in the period of 12 months ending with that day; and

(d) that the nominee under the debtor's proposal . . . is willing to act in relation to the proposal.

(2) The court may make an order if it thinks that it would be appropriate to do so for the purpose of facilitating the consideration and implementation of the debtor's proposal.

(3) Where the debtor is an undischarged bankrupt, the interim order may contain provision as to the conduct of the bankruptcy, and the administration of the bankrupt's estate, during the period for which the order is in force.

(4) Subject as follows, the provision contained in an interim order by virtue of subsection (3) may include provision staying proceedings in the bankruptcy or modifying any provision in this Group of Parts, and any provision of the rules in their application to the debtor's bankruptcy.

(5) An interim order shall not, in relation to a bankrupt, make provision relaxing or removing any of the requirements of provisions in this Group of Parts, or of the rules, unless the court is satisfied that that provision is unlikely to result in any significant diminution in, or in the value of, the debtor's estate for the purposes of the bankruptcy.

(6) Subject to the following provisions of this Part, and interim order made on an application under section 253 ceases to have effect at the end of the period of 14 days beginning with the day after the making of the order.

NOTES
Derivation

This section derived from the Insolvency Act 1985, s 112.
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.
Extent

This section does not extend to Scotland: see s 440(2)(b).

Amendment

Sub-s (1): in para (a) words “a proposal under this Part” in square brackets substituted by the Insolvency Act 2000, s 3, Sch 3, paras 1, 5(a).

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

Sub-s (1): in para (d) words omitted repealed by the Insolvency Act 2000, ss 3, 15(1), Sch 3, paras 1, 5(b), Sch 5.

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

256 Nominee's report on debtor's proposal

(1) Where an interim order has been made on an application under section 253, the nominee shall, before the order ceases to have effect, submit a report to the court stating—

(a) [whether, in his opinion, the voluntary arrangement which the debtor is proposing has a reasonable prospect of being approved and implemented,

(aa)] whether, in his opinion, a meeting of the debtor's creditors should be summoned to consider the debtor's proposal, and

(b) if in his opinion such a meeting should be summoned, the date on which, and time and place at which, he proposes the meeting should be held.

(2) For the purpose of enabling the nominee to prepare his report the debtor shall submit to the nominee—

(a) a document setting out the terms of the voluntary arrangement which the debtor is proposing, and

(b) a statement of his affairs containing—

(i) such particulars of his creditors and of his debts and other liabilities and of his assets as may be prescribed, and

(ii) such other information as may be prescribed.

[(3) The court may—

(a) on an application made by the debtor in a case where the nominee has failed to submit the report required by this section or has died, or

(b) on an application made by the debtor or the nominee in a case where it is impracticable or inappropriate for the nominee to continue to act as such,

direct that the nominee shall be replaced as such by another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.

(3A) The court may, on an application made by the debtor in a case where the nominee has failed to submit the report required by this section, direct that the interim order shall continue, or (if it has ceased to have effect) be renewed, for such further period as the court may specify in the direction.]

(4) The court may, on the application of the nominee, extend the period for which the interim order has effect so as to enable the nominee to have more time to prepare his report.

(5) If the court is satisfied on receiving the nominee's report that a meeting of the debtor's creditors should be summoned to consider the debtor's proposal, the court shall direct that the period for which the interim order has effect shall be extended, for such further period as

it may specify in the direction, for the purpose of enabling the debtor's proposal to be considered by his creditors in accordance with the following provisions of this Part.

(6) The court may discharge the interim order if it is satisfied, on the application of the nominee—

(a) that the debtor has failed to comply with his obligations under subsection (2), or

(b) that for any other reason it would be inappropriate for a meeting of the debtor's creditors to be summoned to consider the debtor's proposal.

NOTES
Derivation

This section derived from the Insolvency Act 1985, s 113.
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.
Extent

This section does not extend to Scotland: see s 440(2)(b).
Amendment

Sub-s (1): in para (a) words from “whether, in his” to “approved and implemented,” and subsequent reference to “(aa)” in square brackets inserted by the Insolvency Act 2000, s 3, Sch 3, paras 1, 6(a).

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

Sub-ss (3), (3A): substituted, for sub-s (3) as originally enacted, by the Insolvency Act 2000, s 3, Sch 3, paras 1, 6(b).

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

Procedure where no interim order made

NOTES
Amendment

Inserted by the Insolvency Act 2000, s 3, Sch 3, paras 1, 7.

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

256A Debtor's proposal and nominee's report

[(1) This section applies where a debtor (being an individual)—

(a) intends to make a proposal under this Part (but an interim order has not been made in relation to the proposal and no application for such an order is pending), and

(b) if he is an undischarged bankrupt, has given notice of the proposal to the official receiver and, if there is one, the trustee of his estate,

unless a bankruptcy petition presented by the debtor is pending and the court has, under section 273, appointed an insolvency practitioner to inquire into the debtor's affairs and report.

(2) For the purpose of enabling the nominee to prepare a report **under subsection (3)**, the debtor shall submit to the nominee —

(a) a document setting out the terms of the voluntary arrangement which the debtor is proposing, and

(b) a statement of his affairs containing—

(i) such particulars of his creditors and of his debts and other liabilities and of his assets as may be prescribed, and

(ii) such other information as may be prescribed.

(3) If the nominee is of the opinion that the debtor is an undischarged bankrupt, or is able to petition for his own bankruptcy, the nominee shall, within 14 days (or such longer period as the court may allow) after receiving the document and statement mentioned in subsection (2), submit a **report to the debtor's creditors** stating—

(a) whether, in his opinion, the voluntary arrangement which the debtor is proposing has a reasonable prospect of being approved and implemented,

(b) whether, in his opinion, a meeting of the debtor's creditors should be summoned to consider the debtor's proposal, and

(c) if in his opinion such a meeting should be summoned, the date on which, and time and place at which, he proposes the meeting should be held.

(4) The court may—

(a) on an application made by the debtor in a case where the nominee has failed to submit the report required by this section or has died, or

(b) on an application made by the debtor or the nominee in a case where it is impracticable or inappropriate for the nominee to continue to act as such,

direct that the nominee shall be replaced as such by another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.

(5) The court may, on an application made by the nominee, extend the period within which the nominee is to submit his report.]

NOTES
Extent

This section does not extend to Scotland: see s 440(2)(b).
Amendment

Inserted by the Insolvency Act 2000, s 3, Sch 3, paras 1, 7.

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

257 Summoning of creditors' meeting
(1) Where it has been reported to the court under section 256 or to the debtor's creditors under section 256A that a meeting of the debtor's creditors should be summoned, the nominee (or his replacement under section 256(3) or 256A(4) shall summon that meeting for the time, date and place proposed in his report unless, in the case of a report to which section 256 applies, the court otherwise directs.

(2) The persons to be summoned to the meeting are every creditor of the debtor of whose claim and address the person summoning the meeting is aware.

(3) For this purpose the creditors of a debtor who is an undischarged bankrupt include—

(a) every person who is a creditor of the bankrupt in respect of a bankruptcy debt, and

(b) every person who would be such a creditor if the bankruptcy had commenced on the day on which notice of the meeting is given.

NOTES
Derivation

This section derived from the Insolvency Act 1985, s 114(1) (in part), (2), (3).
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.
Extent

This section does not extend to Scotland: see s 440(2)(b).
Amendment

Sub-s (1): words "or 256A" in square brackets inserted by the Insolvency Act 2000, s 3, Sch 3, paras 1, 8(a).

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

Sub-s (1): words "256(3) or 256A(4)" in square brackets substituted by the Insolvency Act 2000, s 3, Sch 3, paras 1, 8(b).

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

Consideration and implementation of debtor's proposal

258 Decisions of creditors' meeting

(1) A creditors' meeting summoned under section 257 shall decide whether to approve the proposed voluntary arrangement.

(2) The meeting may approve the proposed voluntary arrangement with modifications, but shall not do so unless the debtor consents to each modification.

(3) The modifications subject to which the proposed voluntary arrangement may be approved may include one conferring the functions proposed to be conferred on the nominee on another person qualified to act as an insolvency practitioner or authorised to act as nominee, in relation to the voluntary arrangement.

But they shall not include any modification by virtue of which the proposal ceases to be a proposal under this Part.

(4) The meeting shall not approve any proposal or modification which affects the right of a secured creditor of the debtor to enforce his security, except with the concurrence of the creditor concerned.

(5) Subject as follows, the meeting shall not approve any proposal or modification under which—

(a) any preferential debt of the debtor is to be paid otherwise than in priority to such of his debts as are not preferential debts, or

(b) a preferential creditor of the debtor is to be paid an amount in respect of a preferential debt that bears to that debt a smaller proportion than is borne to another preferential debt by the amount that is to be paid in respect of that other debt.

However, the meeting may approve such a proposal or modification with the concurrence of the preferential creditor concerned.

(6) Subject as above, the meeting shall be conducted in accordance with the rules.

(7) In this section "preferential debt" has the meaning given by section 386 in Part XII; and "preferential creditor" is to be construed accordingly.

NOTES

Derivation

This section derived from the Insolvency Act 1985, s 115(1)–(6), (9).

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.

Extent

This section does not extend to Scotland: see s 440(2)(b).

Amendment

Sub-s (3): words "or authorised to act as nominee, in relation to the voluntary arrangement" in square brackets substituted by the Insolvency Act 2000, s 3, Sch 3, paras 1, 9.

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

Sub-s (3): words "under this Part" in square brackets substituted by the Insolvency Act 2000, s 3, Sch 3, paras 1, 9.

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

See Further

See further, in relation to the application of this section, with modifications, in respect of the Lloyd's of London insurance market: the Insurers (Reorganisation and Winding Up) Regulations 2004, SI 2004/353, regs 32, 33 (as modified by SI 2005/1998, regs 32, 40(1)–(4), (11)).

259 Report of decisions to court

(1) After the conclusion in accordance with the rules of the meeting summoned under section 257, the chairman of the meeting shall—

(a) give notice of the result of the meeting to such persons as may be prescribed, and

(b) where the meeting was summoned under section 257 pursuant to a report to the court under section 256(1)(aa), report the result of it to the court.

(2) If the report is that the meeting has declined (with or without modifications) to approve the **voluntary arrangement proposed under section 256**, the court may discharge any interim order which is in force in relation to the debtor.

NOTES

Derivation

This section derived from the Insolvency Act 1985, s 115(7), (8).

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.

Extent

This section does not extend to Scotland: see s 440(2)(b).

260 Effect of approval

(1) This section has effect where the meeting summoned under section 257 approves the proposed voluntary arrangement (with or without modifications).

(2) The approved arrangement—

(a) takes effect as if made by the debtor at the meeting, and

(b) binds every person who in accordance with the rules—

(i) was entitled to vote at the meeting (whether or not he was present or represented at it), or

(ii) would have been so entitled if he had had notice of it,

as if he were a party to the arrangement.

(2A) If—

(a) when the arrangement ceases to have effect any amount payable under the arrangement to a person bound by virtue of subsection (2)(b)(ii) has not been paid, and

(b) the arrangement did not come to an end prematurely,

the debtor shall at that time become liable to pay to that person the amount payable under the arrangement.

(3) The Deeds of Arrangement Act 1914 does not apply to the approved voluntary arrangement.

(4) Any interim order in force in relation to the debtor immediately before the end of the period of 28 days beginning with the day on which the report with respect to the creditors' meeting was made to the court under section 259 ceases to have effect at the end of that period.

This subsection applies except to such extent as the court may direct for the purposes of any application under section 262 below.

(5) Where proceedings on a bankruptcy petition have been stayed by an interim order which ceases to have effect under subsection (4), the petition is deemed, unless the court otherwise orders, to have been dismissed.

NOTES

Derivation

This section derived from the Insolvency Act 1985, s 116(1)–(3), (6), (7).

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.

Extent

This section does not extend to Scotland: see s 440(2)(b).

Amendment

Sub-s (2): para (b) substituted, together with sub-s (2A), by the Insolvency Act 2000, s 3, Sch 3, paras 1, 10.

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

Sub-s (2A): substituted, together with sub-s (2)(b), for sub-s (2)(b) as originally enacted, by the Insolvency Act 2000, s 3, Sch 3, paras 1, 10.

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

261 Additional effect on undischarged bankrupt

(1) This section applies where—

(a) the creditors' meeting summoned under section 257 approves the proposed voluntary arrangement (with or without modifications), and

(b) the debtor is an undischarged bankrupt.

(2) Where this section applies the court shall annul the bankruptcy order on an application made—

(a) by the bankrupt, or

(b) where the bankrupt has not made an application within the prescribed period, by the official receiver.

(3) An application under subsection (2) may not be made—

(a) during the period specified in section 262(3)(a) during which the decision of the creditors' meeting can be challenged by application under section 262,

(b) while an application under that section is pending, or

(c) while an appeal in respect of an application under that section is pending or may be brought.

(4) Where this section applies the court may give such directions about the conduct of the bankruptcy and the administration of the bankrupt's estate as it thinks appropriate for facilitating the implementation of the approved voluntary arrangement.

NOTES

Derivation

This section derived from the Insolvency Act 1985, s 116(4), (5).

Extent

This section does not extend to Scotland: see s 440(2)(b).

Amendment

Substituted by the Enterprise Act 2002, s 264(1), Sch 22, para 1.

Date in force: 1 April 2004: see SI 2003/2093, art 2(2), Sch 2.

262 Challenge of meeting's decision

(1) Subject to this section, an application to the court may be made, by any of the persons specified below, on one or both of the following grounds, namely—

(a) that a voluntary arrangement approved by a creditors' meeting summoned under section 257 unfairly prejudices the interests of a creditor of the debtor;

(b) that there has been some material irregularity at or in relation to such a meeting.

(2) The persons who may apply under this section are—

(a) the debtor;

(b) a person who—

(i) was entitled, in accordance with the rules, to vote at the creditors' meeting, or

(ii) would have been so entitled if he had had notice of it;

(c) the nominee (or his replacement under section 256(3), 256A(4) or 258(3)); and

(d) if the debtor is an undischarged bankrupt, the trustee of his estate or the official receiver.

(3) An application under this section shall not be made—

(a) after the end of the period of 28 days beginning with the day on which the report of the creditors' meeting was made to the court under section 259, or

(b) in the case of a person who was not given notice of the creditors' meeting, after the end of the period of 28 days beginning with the day on which he became aware that the meeting had taken place,

but (subject to that) an application made by a person within subsection (2)(b)(ii) on the ground that the arrangement prejudices his interests may be made after the arrangement has ceased to have effect, unless it has come to an end prematurely.

(4) Where on an application under this section the court is satisfied as to either of the grounds mentioned in subsection (1), it may do one or both of the following, namely—

(a) revoke or suspend any approval given by the meeting;

(b) give a direction to any person for the summoning of a further meeting of the debtor's creditors to consider any revised proposal he may make or, in a case falling within subsection (1)(b), to reconsider his original proposal.

(5) Where at any time after giving a direction under subsection (4)(b) for the summoning of a meeting to consider a revised proposal the court is satisfied that the debtor does not intend to submit such a proposal, the court shall revoke the direction and revoke or suspend any approval given at the previous meeting.

(6) Where the court gives a direction under subsection (4)(b), it may also give a direction continuing or, as the case may require, renewing, for such period as may be specified in the direction, the effect in relation to the debtor of any interim order.

(7) In any case where the court, on an application made under this section with respect to a creditors' meeting, gives a direction under subsection (4)(b) or revokes or suspends an approval

under subsection (4)(a) or (5), the court may give such supplemental directions as it thinks fit and, in particular, directions with respect to—

(a) things done since the meeting under any voluntary arrangement approved by the meeting, and

(b) such things done since the meeting as could not have been done if an interim order had been in force in relation to the debtor when they were done.

(8) Except in pursuance of the preceding provisions of this section, an approval given at a creditors' meeting summoned under section 257 is not invalidated by any irregularity at or in relation to the meeting.

NOTES

Derivation

This section derived from the Insolvency Act 1985, s 117.

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.

Extent

This section does not extend to Scotland: see s 440(2)(b).

Amendment

Sub-s (2): para (b) substituted by the Insolvency Act 2000, s 3, Sch 3, paras 1, 11(1)(a).

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

Sub-s (2): in para (c) reference to "256(3), 256A(4)" in square brackets substituted by the Insolvency Act 2000, s 3, Sch 3, paras 1, 11(1)(b).

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

Sub-s (3): reference to "(a)" in square brackets inserted by the Insolvency Act 2000, s 3, Sch 3, paras 1, 11(2)(a).

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

Sub-s (3): para (b) and word "or" immediately preceding it and words from "but (subject to that)" to "an end prematurely" in square brackets inserted by the Insolvency Act 2000, s 3, Sch 3, paras 1, 11(2)(b).

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

262A False representations etc

(1) If for the purpose of obtaining the approval of his creditors to a proposal for a voluntary arrangement, the debtor—

(a) makes any false representation, or

(b) fraudulently does, or omits to do, anything,

he commits an offence.

(2) Subsection (1) applies even if the proposal is not approved.

(3) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.

NOTES

Extent

This section does not extend to Scotland: see s 440(2)(b).
Amendment

Inserted by the Insolvency Act 2000, s 3, Sch 3, paras 1, 12.

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

262B Prosecution of delinquent debtors

(1) This section applies where a voluntary arrangement approved by a creditors' meeting summoned under section 257 has taken effect.

(2) If it appears to the nominee or supervisor that the debtor has been guilty of any offence in connection with the arrangement for which he is criminally liable, he shall forthwith—

(a) report the matter to the Secretary of State, and

(b) provide the Secretary of State with such information and give the Secretary of State such access to and facilities for inspecting and taking copies of documents (being information or documents in his possession or under his control and relating to the matter in question) as the Secretary of State requires.

(3) Where a prosecuting authority institutes criminal proceedings following any report under subsection (2), the nominee or, as the case may be, supervisor shall give the authority all assistance in connection with the prosecution which he is reasonably able to give.

For this purpose, "prosecuting authority" means the Director of Public Prosecutions or the Secretary of State.

(4) The court may, on the application of the prosecuting authority, direct a nominee or supervisor to comply with subsection (3) if he has failed to do so.
NOTES
Extent

This section does not extend to Scotland: see s 440(2)(b).
Amendment

Inserted by the Insolvency Act 2000, s 3, Sch 3, paras 1, 12.

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

262C Arrangements coming to an end prematurely

For the purposes of this Part, a voluntary arrangement approved by a creditors' meeting summoned under section 257 comes to an end prematurely if, when it ceases to have effect, it has not been fully implemented in respect of all persons bound by the arrangement by virtue of section 260(2)(b)(i).
NOTES
Extent

This section does not extend to Scotland: see s 440(2)(b).
Amendment

Inserted by the Insolvency Act 2000, s 3, Sch 3, paras 1, 12.

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

263 Implementation and supervision of approved voluntary arrangement

(1) This section applies where a voluntary arrangement approved by a creditors' meeting summoned under section 257 has taken effect.

(2) The person who is for the time being carrying out, in relation to the voluntary arrangement, the functions conferred by virtue of the approval on the nominee (or his replacement under section 256(3), 256A(4) or 258(3)) shall be known as the supervisor of the voluntary arrangement.

(3) If the debtor, any of his creditors or any other person is dissatisfied by any act, omission or decision of the supervisor, he may apply to the court; and on such an application the court may—

(a) confirm, reverse or modify any act or decision of the supervisor,

(b) give him directions, or

(c) make such other order as it thinks fit.

(4) The supervisor may apply to the court for directions in relation to any particular matter arising under the voluntary arrangement.

(5) The court may, whenever—

(a) it is expedient to appoint a person to carry out the functions of the supervisor, and

(b) it is inexpedient, difficult or impracticable for an appointment to be made without the assistance of the court,

make an order appointing a person who is qualified to act as an insolvency practitioner or authorised to act as supervisor, in relation to the voluntary arrangement, either in substitution for the existing supervisor or to fill a vacancy.

This is without prejudice to section 41(2) of the Trustee Act 1925 (power of court to appoint trustees of deeds of arrangement).

(6) The power conferred by subsection (5) is exercisable so as to increase the number of persons exercising the functions of the supervisor or, where there is more than one person exercising those functions, so as to replace one or more of those persons.

NOTES

Derivation

This section derived from the Insolvency Act 1985, s 118.

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.

Extent

This section does not extend to Scotland: see s 440(2)(b).

Amendment

Sub-s (2): reference to “256(3), 256A(4)” in square brackets substituted by the Insolvency Act 2000, s 3, Sch 3, paras 1, 13(a).

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

Sub-s (5): words "or authorised to act as supervisor, in relation to the voluntary arrangement" in square brackets substituted by the Insolvency Act 2000, s 3, Sch 3, paras 1, 13(b).

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

Fast-track voluntary arrangements

NOTES
Amendment

Inserted by the Enterprise Act 2002, s 264(1), Sch 22, para 2.

Date in force: 1 April 2004: see SI 2003/2093, art 2(2), Sch 2.

263A Availability

Section 263B applies where an individual debtor intends to make a proposal to his creditors for a voluntary arrangement and—

(a) the debtor is an undischarged bankrupt,

(b) the official receiver is specified in the proposal as the nominee in relation to the voluntary arrangement, and

(c) no interim order is applied for under section 253.

NOTES
Extent

This section does not extend to Scotland: see s 440(2)(b).
Amendment

Inserted by the Enterprise Act 2002, s 264(1), Sch 22, para 2.

Date in force: 1 April 2004: see SI 2003/2093, art 2(2), Sch 2.

263B Decision

(1) The debtor may submit to the official receiver—

(a) a document setting out the terms of the voluntary arrangement which the debtor is proposing, and

(b) a statement of his affairs containing such particulars as may be prescribed of his creditors, debts, other liabilities and assets and such other information as may be prescribed.

(2) If the official receiver thinks that the voluntary arrangement proposed has a reasonable prospect of being approved and implemented, he may make arrangements for inviting creditors to decide whether to approve it.

(3) For the purposes of subsection (2) a person is a "creditor" only if—

(a) he is a creditor of the debtor in respect of a bankruptcy debt, and

(b) the official receiver is aware of his claim and his address.

(4) Arrangements made under subsection (2)—

(a) must include the provision to each creditor of a copy of the proposed voluntary arrangement,

(b) must include the provision to each creditor of information about the criteria by reference to which the official receiver will determine whether the creditors approve or reject the proposed voluntary arrangement, and

(c) may not include an opportunity for modifications to the proposed voluntary arrangement to be suggested or made.

(5) Where a debtor submits documents to the official receiver under subsection (1) no application under section 253 for an interim order may be made in respect of the debtor until the official receiver has—

(a) made arrangements as described in subsection (2), or

(b) informed the debtor that he does not intend to make arrangements (whether because he does not think the voluntary arrangement has a reasonable prospect of being approved and implemented or because he declines to act).

NOTES
Extent

This section does not extend to Scotland: see s 440(2)(b).
Amendment

Inserted by the Enterprise Act 2002, s 264(1), Sch 22, para 2.

Date in force: 1 April 2004: see SI 2003/2093, art 2(2), Sch 2.

263C Result

As soon as is reasonably practicable after the implementation of arrangements under section 263B(2) the official receiver shall **notify the Secretary of State** whether the proposed voluntary arrangement has been approved or rejected.

NOTES
Extent

This section does not extend to Scotland: see s 440(2)(b).
Amendment

Inserted by the Enterprise Act 2002, s 264(1), Sch 22, para 2.

Date in force: 1 April 2004: see SI 2003/2093, art 2(2), Sch 2.

263D Approval of voluntary arrangement

(1) This section applies where the official receiver reports to the court under section 263C that a proposed voluntary arrangement has been approved.

(2) The voluntary arrangement—

(a) takes effect,

(b) binds the debtor, and

(c) binds every person who was entitled to participate in the arrangements made under section 263B(2).

(3) The court shall annul the bankruptcy order in respect of the debtor on an application made by the official receiver.

(4) An application under subsection (3) may not be made—

(a) during the period specified in section 263F(3) during which the voluntary arrangement can be challenged by application under section 263F(2),

(b) while an application under that section is pending, or

(c) while an appeal in respect of an application under that section is pending or may be brought.

(5) The court may give such directions about the conduct of the bankruptcy and the administration of the bankrupt's estate as it thinks appropriate for facilitating the implementation of the approved voluntary arrangement.

(6) The Deeds of Arrangement Act 1914 (c 47) does not apply to the voluntary arrangement.

(7) A reference in this Act or another enactment to a voluntary arrangement approved under this Part includes a reference to a voluntary arrangement which has effect by virtue of this section.

NOTES
Extent

This section does not extend to Scotland: see s 440(2)(b).
Amendment

Inserted by the Enterprise Act 2002, s 264(1), Sch 22, para 2.

Date in force: 1 April 2004: see SI 2003/2093, art 2(2), Sch 2.

263E Implementation

Section 263 shall apply to a voluntary arrangement which has effect by virtue of section 263D(2) as it applies to a voluntary arrangement approved by a creditors' meeting.

NOTES
Extent

This section does not extend to Scotland: see s 440(2)(b).
Amendment

Inserted by the Enterprise Act 2002, s 264(1), Sch 22, para 2.

Date in force: 1 April 2004: see SI 2003/2093, art 2(2), Sch 2.

263F Revocation

(1) The court may make an order revoking a voluntary arrangement which has effect by virtue of section 263D(2) on the ground—

(a) that it unfairly prejudices the interests of a creditor of the debtor, or

(b) that a material irregularity occurred in relation to the arrangements made under section 263B(2).

(2) An order under subsection (1) may be made only on the application of—

(a) the debtor,

(b) a person who was entitled to participate in the arrangements made under section 263B(2),

(c) the trustee of the bankrupt's estate, or

(d) the official receiver.

(3) An application under subsection (2) may not be made after the end of the period of 28 days beginning with the date on which the official receiver **notifies the Secretary of State** under section 263C.

(4) But a creditor who was not made aware of the arrangements under section 263B(2) at the time when they were made may make an application under subsection (2) during the period of 28 days beginning with the date on which he becomes aware of the voluntary arrangement.

NOTES

Extent

This section does not extend to Scotland: see s 440(2)(b).

Amendment

Inserted by the Enterprise Act 2002, s 264(1), Sch 22, para 2.

Date in force: 1 April 2004: see SI 2003/2093, art 2(2), Sch 2.

263G Offences

(1) Section 262A shall have effect in relation to obtaining approval to a proposal for a voluntary arrangement under section 263D.

(2) Section 262B shall have effect in relation to a voluntary arrangement which has effect by virtue of section 263D(2) (for which purposes the words “by a creditors' meeting summoned under section 257” shall be disregarded).

NOTES

Extent

This section does not extend to Scotland: see s 440(2)(b).

Amendment

Inserted by the Enterprise Act 2002, s 264(1), Sch 22, para 2.

Date in force: 1 April 2004: see SI 2003/2093, art 2(2), Sch 2.

366 Inquiry into bankrupt's dealings and property

(1) At any time after a bankruptcy order has been made the court may, on the application of the official receiver or the trustee of the bankrupt's estate, summon to appear before it—

(a) the bankrupt or the bankrupt's spouse or former spouse [or civil partner or former civil partner],

(b) any person known or believed to have any property comprised in the bankrupt's estate in his possession or to be indebted to the bankrupt,

(c) any person appearing to the court to be able to give information concerning the bankrupt or the bankrupt's dealings, affairs or property.

The court may require any such person as is mentioned in paragraph (b) or (c) to submit **a witness statement verified by a statement of truth** to the court containing an account of his

dealings with the bankrupt or to produce any documents in his possession or under his control relating to the bankrupt or the bankrupt's dealings, affairs or property.

(2) Without prejudice to section 364, the following applies in a case where—

(a) a person without reasonable excuse fails to appear before the court when he is summoned to do so under this section, or

(b) there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding his appearance before the court under this section.

(3) The court may, for the purpose of bringing that person and anything in his possession before the court, cause a warrant to be issued to a constable or prescribed officer of the court—

(a) for the arrest of that person, and

(b) for the seizure of any books, papers, records, money or goods in that person's possession.

(4) The court may authorise a person arrested under such a warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until that person is brought before the court under the warrant or until such other time as the court may order.

NOTES
Derivation

This section derived from the Insolvency Act 1985, s 196(1), (2).

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.
Extent

This section does not extend to Scotland: see s 440(2)(b).

Amendment

Sub-s (1): in para (a) words “or civil partner or former civil partner” in square brackets inserted by the Civil Partnership Act 2004, s 261(1), Sch 27, para 120.

Date in force: 5 December 2005: see SI 2005/3175, art 2(2).

379A Attendance at meetings by electronic means

(1) Where—

(a) a bankruptcy order is made against an individual or an interim receiver of an individual’s property is appointed, or

(b) a voluntary arrangement in relation to an individual is proposed or is approved under Part 8,

this section applies to any meeting of the individual’s creditors summoned under this Act or the rules.

(2) Where the person summoning a meeting ("the convener") considers it appropriate, the meeting may be conducted and held in such a way that persons who are not present together at the same place may attend it.

(3) Where a meeting is conducted and held in the manner referred to in subsection (2), a person attends the meeting if that person is able to exercise any rights which that person may have to speak and vote at the meeting.

(4) For the purposes of this section—

(a) a person exercises the right to speak at a meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting; and

(b) a person exercises the right to vote at a meeting when—

(i) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting, and

(ii) that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.

(5) The convener of a meeting which is to be conducted and held in the manner referred to in subsection (2) may make whatever arrangements the convener considers appropriate to—

(a) enable those attending the meeting to exercise their rights to speak or vote, and

(b) ensure the identification of those attending the meeting and the security of any electronic means used to enable attendance.

(6) Where in the reasonable opinion of the convener—

(a) a meeting will be attended by persons who will not be present together at the same place, and

(b) it is unnecessary or inexpedient to specify a place for the meeting,

any requirement under this Act or the rules to specify a place for the meeting may be satisfied by specifying the arrangements the convener proposes to enable persons to exercise their rights to speak or vote.

(7) In making the arrangements referred to in subsection (5) and in forming the opinion referred to in subsection (6)(b), the convener must have regard to the legitimate interests of the creditors and others attending the meeting in the efficient despatch of the business of the meeting.

(8) If—

(a) the notice of a meeting does not specify a place for the meeting,

(b) the convener is requested in accordance with the rules to specify a place for the meeting, and

(c) that request is made by not less than a prescribed percentage in value of the creditors,

it shall be the duty of the convener to specify a place for the meeting.

379 Use of websites

(1) This section applies where—

(a) a bankruptcy order is made against an individual or an interim receiver of an individual's property is appointed, or

(b) a voluntary arrangement in relation to an individual is proposed or is approved under Part 8,

and "the office-holder" means the official receiver, the trustee in bankruptcy, the interim receiver, the nominee or the supervisor of the voluntary arrangement, as the case may be.

(2) Where any provision of this Act or the rules requires the office-holder to give, deliver, furnish or send a notice or other document or information to any person, that requirement is satisfied by making the notice, document or information available on a website—

(a) in accordance with the rules, and

(b) in such circumstances as may be prescribed.

436 Expressions used generally

In this Act, except in so far as the context otherwise requires (and subject to Parts VII and XI)—

"the appointed day" means the day on which this Act comes into force under section 443;

"associate" has the meaning given by section 435;

"business" includes a trade or profession;

"the Companies Act" means the Companies Act 1985;

["the Companies Acts" means the Companies Acts (as defined in section 2 of the Companies Act 2006) as they have effect in Great Britain;]

"conditional sale agreement" and "hire-purchase agreement" have the same meanings as in the Consumer Credit Act 1974;

[“distress” includes use of the procedure in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007, and references to levying distress, seizing goods and related expressions shall be construed accordingly;]

[“the EC Regulation” means Council Regulation (EC) No 1346/2000;]

[“EEA State” means a state that is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993;]

“modifications” includes additions, alterations and omissions and cognate expressions shall be construed accordingly;

“property” includes money, goods, things in action, land and every description of property wherever situated and also obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property;

“records” includes computer records and other non-documentary records;

“subordinate legislation” has the same meaning as in the Interpretation Act 1978; and

“transaction” includes a gift, agreement or arrangement, and references to entering into a transaction shall be construed accordingly.

NOTES
Derivation

This section derived from the Insolvency Act 1985, s 232 (in part).

Initial Commencement
Royal Assent

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 1996 (being the day on which the Insolvency Act 1985, Pt III came into force): see SI 1986/1924, art 3.

Amendment

Definition “the Companies Acts” inserted by SI 2007/2194, art 10(1), (2), Sch 4, Pt 3, para 45.

Date in force: 1 October 2007: see SI 2007/2194, art 1(3)(a); for savings see art 12 thereof.

Definition “distress” inserted by the Tribunals, Courts and Enforcement Act 2007, s 62(3), Sch 13, para 85.

Date in force: to be appointed: see the Tribunals, Courts and Enforcement Act 2007, s 148(5).

Definition “the EC Regulation” inserted by SI 2002/1037, regs 2, 4.

Date in force: 3 May 2002: see SI 2002/1037, reg 1(1).

Definition “EEA State” inserted by SI 2005/879, reg 2(1), (3).

Date in force: 13 April 2005: see SI 2005/879, reg 1(1); for effect see reg 3 thereof.

Modification

Modified, in relation to insolvent partnerships, by the Insolvent Partnerships Order 1994, SI 1994/2421, art 2(1), (2).
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.

[436A Proceedings under EC Regulation: modified definition of property]

[In the application of this Act to proceedings by virtue of Article 3 of the EC Regulation, a reference to property is a reference to property which may be dealt with in the proceedings.]

NOTES
Amendment

Inserted by SI 2002/1240, regs 3, 18.

Date in force: 31 May 2002: see SI 2002/1240, reg 1.

436B References to things in writing

(1) A reference in this Act to a thing in writing includes that thing in electronic form.

(2) Subsection (1) does not apply to the following provisions—

(a) section 53 (mode of appointment by holder of charge),

(b) section 67(2) (report by receiver),

(c) section 70(4) (reference to instrument creating a charge),

(d) section 111(2) (dissent from arrangement under s. 110),

(e) in the case of a winding up of a company registered in Scotland, section 111(4),

(f) section 123(1) (definition of inability to pay debts),

(g) section 198(3) (duties of sheriff principal as regards examination),

(h) section 222(1) (inability to pay debts: unpaid creditor for £750 or more), and

(i) section 223 (inability to pay debts: debt remaining unsatisfied after action brought).

[SCHEDULE B1
Administration]

NOTES
Amendment

Inserted by the Enterprise Act 2002, s 248(2), Sch 16.

Date in force: 15 September 2003: see SI 2003/2093, art 2(1), Sch 1; for transitional provisions and effect see art 3(1), (2)(a), (3) thereof and the Enterprise Act 2002, s 249, Sch 17, para 1.

111 Interpretation

(1) In this Schedule—

"administrative receiver" has the meaning given by section 251,

"administrator" has the meaning given by paragraph 1 and, where the context requires, includes a reference to a former administrator,

. . .

"correspondence" includes correspondence by telephonic or other electronic means,

"creditors' meeting" has the meaning given by paragraph 50,

"enters administration" has the meaning given by paragraph 1,

"floating charge" means a charge which is a floating charge on its creation,

"in administration" has the meaning given by paragraph 1,

"hire-purchase agreement" includes a conditional sale agreement, a chattel leasing agreement and a retention of title agreement,

"holder of a qualifying floating charge" in respect of a company's property has the meaning given by paragraph 14,

"market value" means the amount which would be realised on a sale of property in the open market by a willing vendor,

"the purpose of administration" means an objective specified in paragraph 3, and

"unable to pay its debts" has the meaning given by section 123.

[(1A) In this Schedule, "company" means—

(a) a company within the meaning of section 735(1) of the Companies Act 1985,

(b) a company incorporated in an EEA State other than the United Kingdom, or

(c) a company not incorporated in an EEA State but having its centre of main interests in a member State other than Denmark.

(1B) In sub-paragraph (1A), in relation to a company, "centre of main interests" has the same meaning as in the EC Regulation and, in the absence of proof to the contrary, is presumed to be the place of its registered office (within the meaning of that Regulation).]

(2) ……..

(3) In this Schedule a reference to action includes a reference to inaction.

NOTES

Para 111: in sub-para (1) definition "company" (omitted) repealed by SI 2005/879, reg 2(1), (4)(a).

Date in force: 13 April 2005: see SI 2005/879, reg 1(1); for effect see reg 3 thereof.

Para 111: sub-paras (1A), (1B) inserted by SI 2005/879, reg 2(1), (4)(b).

Date in force: 13 April 2005: see SI 2005/879, reg 1(1); for effect see reg 3 thereof.

SCHEDULE 4

Powers of Liquidator in a Winding Up

Part I

Powers Exercisable with Sanction

1. Power to pay any class of creditors in full.

2. Power to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim (present or future, certain or contingent, ascertained or sounding only in damages) against the company, or whereby the company may be rendered liable.

3. **In the case of a winding up in Scotland, power** to compromise, on such terms as may be agreed—

(a) all calls and liabilities to calls, all debts and liabilities capable of resulting in debts, and all claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and

(b) all questions in any way relating to or affecting the assets or the winding up of the company,

and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect of it.

[3A. Power to bring legal proceedings under section 213, 214, 238, 239, 242, 243 or 423.]

NOTES
Derivation

This Part derived from the Companies Act 1985, ss 539(1)(d)-(f), 598(1).

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

Para 3A: inserted by the Enterprise Act 2002, s 253.

Date in force: 15 September 2003: see SI 2003/2093, art 2(1), Sch 1; for transitional provisions see art 5 thereof.

Modification

The Limited Liability Partnerships Act 2000 provides for the creation of Limited Liability Partnerships (LLPs). 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 SSI 2001/128, regs 4, 6, Sch 2.

Part II

Powers Exercisable without Sanction in Voluntary Winding Up, with Sanction in Winding Up by the Court

4. Power to bring or defend any action or other legal proceeding in the name and on behalf of the company.

5. Power to carry on the business of the company so far as may be necessary for its beneficial winding up.

NOTES
Derivation

This Part derived from the Companies Act 1985, ss 539(1)(a), (b), 598(2).
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

The Limited Liability Partnerships Act 2000 provides for the creation of Limited Liability Partnerships (LLPs). 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 SSI 2001/128, regs 4, 6, Sch 2.

Part III
Powers Exercisable Without Sanction in any Winding Up

6. Power to sell any of the company's property by public auction or private contract with power to transfer the whole of it to any person or to sell the same in parcels.

6A. In the case of a winding up in England and Wales, power to compromise, on such terms as may be agreed—

> **(a) all calls and liabilities to calls, all debts and liabilities capable of resulting in debts, and all claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and**
>
> **(b) subject to paragraph 2 in Part 1 of this Schedule, all questions in any way relating to or affecting the assets or the winding up of the company,**

and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect of it.

7. Power to do all acts and execute, in the name and on behalf of the company, all deeds, receipts and other documents and for that purpose to use, when necessary, the company's seal.

8. Power to prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributory for any balance against his estate, and to receive dividends in the bankruptcy, insolvency or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors.

9. Power to draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the company's liability as if the bill or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business.

10. Power to raise on the security of the assets of the company any money requisite.

11. Power to take out in his official name letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot conveniently be done in the name of the company.

In all such cases the money due is deemed, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, to be due to the liquidator himself.

12. Power to appoint an agent to do any business which the liquidator is unable to do himself.

13. Power to do all such other things as may be necessary for winding up the company's affairs and distributing its assets.

NOTES
Derivation

This Part derived from the Companies Act 1985, ss 539(2), 598(2).

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

The Limited Liability Partnerships Act 2000 provides for the creation of Limited Liability Partnerships (LLPs). 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 SSI 2001/128, regs 4, 6, Sch 2.

SCHEDULE 5

Powers of Trustee in Bankruptcy

Part I
Powers Exercisable with Sanction

1. Power to carry on any business of the bankrupt so far as may be necessary for winding it up beneficially and so far as the trustee is able to do so without contravening any requirement imposed by or under any enactment.

2. Power to bring, institute or defend any action or legal proceedings relating to the property comprised in the bankrupt's estate.

[2A. Power to bring legal proceedings under section 339, 340 or 423.]

3. Power to accept as the consideration for the sale of any property comprised in the bankrupt's estate a sum of money payable at a future time subject to such stipulations as to security or otherwise as the creditors' committee or the court thinks fit.

4. Power to mortgage or pledge any part of the property comprised in the bankrupt's estate for the purpose of raising money for the payment of his debts.

5. Power, where any right, option or other power forms part of the bankrupt's estate, to make payments or incur liabilities with a view to obtaining, for the benefit of the creditors, any property which is the subject of the right, option or power.

6. ……..

7. Power to make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors, in respect of bankruptcy debts.

8. Power to make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the bankrupt's estate made or capable of being made on the trustee by any person**…..**.

NOTES
Derivation

This Part derived from the Insolvency Act 1985, s 160(2).

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.

Extent

This Schedule does not extend to Scotland.

Amendment

Para 2A: inserted by the Enterprise Act 2002, s 262.

Date in force: 15 September 2003: see SI 2003/2093, art 2(1), Sch 1; for transitional provisions see art 6 thereof.

Part II
General Powers

9. Power to sell any part of the property for the time being comprised in the bankrupt's estate, including the goodwill and book debts of any business.

9A. Power to refer to arbitration, or compromise on such terms as may be agreed, any debts, claims or liabilities subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt.

9B. Power to make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the bankrupt’s estate made or capable of being made by the trustee on any person

10. Power to give receipts for any money received by him, being receipts which effectually discharge the person paying the money from all responsibility in respect of its application.

11. Power to prove, rank, claim and draw a dividend in respect of such debts due to the bankrupt as are comprised in his estate.

12. Power to exercise in relation to any property comprised in the bankrupt's estate any powers the capacity to exercise which is vested in him under Parts VIII to XI of this Act.

13. Power to deal with any property comprised in the estate to which the bankrupt is beneficially entitled as tenant in tail in the same manner as the bankrupt might have dealt with it.

NOTES
Derivation

This Part derived from the Insolvency Act 1985, s 160(1).

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.

Extent

This Schedule does not extend to Scotland.

Part III
Ancillary Powers

14. For the purposes of, or in connection with, the exercise of any of his powers under Parts VIII to XI of this Act, the trustee may, by his official name—

(a) hold property of every description,

(b) make contracts,

(c) sue and be sued,

(d) enter into engagements binding on himself and, in respect of the bankrupt's estate, on his successors in office,

(e) employ an agent,

(f) execute any power of attorney, deed or other instrument;

and he may do any other act which is necessary or expedient for the purposes of or in connection with the exercise of those powers.

NOTES
Derivation

This Part derived from the Insolvency Act 1985, s 160(6).

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.

Extent

This Schedule does not extend to Scotland.

ANNEX L

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

47 Statement of affairs to be submitted

(1) Where an administrative receiver is appointed, he shall forthwith require some or all of the persons mentioned below to make out and submit to him a statement in the prescribed form as to the affairs of the company.

(2) A statement submitted under this section shall be verified by affidavit by the persons required to submit it and shall show—

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

(b) the names and addresses of its 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.

(3) The persons referred to in subsection (1) are—

(a) those who are or have been officers of the company;

(b) those who have taken part in the company's formation at any time within one year before the date of the appointment of the administrative receiver;

(c) those who are in the company's employment, or have been in its employment within that year, and are in the administrative receiver's opinion capable of giving the information required;

(d) those who are or have been within that year officers of or in the employment of a company which is, or within that year was, an officer of the company.

In this subsection “employment” includes employment under a contract for services.

(4) Where any persons are required under this section to submit a statement of affairs to the administrative receiver, they shall do so (subject to the next subsection) before the end of the period of 21 days beginning with the day after that on which the prescribed notice of the requirement is given to them by the administrative receiver.

(5) The administrative receiver, if he thinks fit, may—

(a) at any time release a person from an obligation imposed on him under subsection (1) or (2), or

(b) either when giving notice under subsection (4) or subsequently, extend the period so mentioned;

and where the administrative receiver has refused to exercise a power conferred by this subsection, the court, if it thinks fit, may exercise it.

(6) If a person without reasonable excuse fails to comply with any obligation imposed under this section, he is liable to a fine and, for continued contravention, to a daily default fine.

NOTES
Derivation

This section derived from the Insolvency Act 1985, s 53.

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.

PART IV

Chapter III
Members' Voluntary Winding Up

91 Appointment of liquidator

(1) In a members' voluntary winding up, the company in general meeting shall appoint one or more liquidators for the purpose of winding up the company's affairs and distributing its assets.

(2) On the appointment of a liquidator all the powers of the directors cease, except so far as the company in general meeting or the liquidator sanctions their continuance.

NOTES
Derivation

This section derived from the Companies Act 1985, s 580.

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.

92 Power to fill vacancy in office of liquidator

(1) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(3) The meeting shall be held in manner provided by this Act or by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the court.

NOTES
Derivation

This section derived from the Companies Act 1985, s 581.

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.

93 General company meeting at each year's end

(1) Subject to sections 96 and 102, in the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within 3 months from the end of the year or such longer period as the Secretary of State may allow.

(2) The liquidator shall lay before the meeting an account of his acts and dealings, and of the conduct of the winding up, during the preceding year.

(3) If the liquidator fails to comply with this section, he is liable to a fine.

NOTES
Derivation

This section derived from the Companies Act 1985, s 584, and the Insolvency Act 1985, Sch 6, para 36.

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.

94 Final meeting prior to dissolution

(1) As soon as the company's affairs are fully wound up, the liquidator shall make up an account of the winding up, showing how it has been conducted and the company's property has been disposed of, and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving an explanation of it.

(2) The meeting shall be called by advertisement in the Gazette, specifying its time, place and object and published at least one month before the meeting.

(3) Within one week after the meeting, the liquidator shall send to the registrar of companies a copy of the account, and shall make a return to him of the holding of the meeting and of its date.

(4) If the copy is not sent or the return is not made in accordance with subsection (3), the liquidator is liable to a fine and, for continued contravention, to a daily default fine.

(5) If a quorum is not present at the meeting, the liquidator shall, in lieu of the return mentioned above, make a return that the meeting was duly summoned and that no quorum was present; and upon such a return being made, the provisions of subsection (3) as to the making of the return are deemed complied with.

(6) If the liquidator fails to call a general meeting of the company as required by subsection (1), he is liable to a fine.

NOTES
Derivation

This section derived from the Companies Act 1985, s 585(1)–(4), (7).

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.
Anything directed to be done, or which may be done, to or by the registrar of companies in Scotland by virtue of sub-s (3) above, or the assistant registrar of friendly societies for Scotland by virtue of that subsection as applied in relation to friendly societies, industrial and provident societies or building societies, shall, or (as the case may be) may, also be done to or by the Accountant in Bankruptcy: see the Scotland Act 1998, s 125, Sch 8, para 23(2), (3).
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.

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) 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

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).

96 Conversion to creditors' voluntary winding up

As from the day on which the creditors' meeting is held under section 95, this Act has effect as if—

(a) the directors' declaration under section 89 had not been made; and

(b) the creditors' meeting and the company meeting at which it was resolved that the company be wound up voluntarily were the meetings mentioned in section 98 in the next Chapter;

and accordingly the winding up becomes a creditors' voluntary winding up.

NOTES
Derivation

This section derived from the Insolvency Act 1985, s 83(7) (in part).

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 IV
Creditors' Voluntary Winding Up

97 Application of this Chapter

(1) Subject as follows, this Chapter applies in relation to a creditors' voluntary winding up.

(2) Sections 98 and 99 do not apply where, under section 96 in Chapter III, a members' voluntary winding up has become a creditors' voluntary winding up.

NOTES
Derivation

This section derived from the Companies Act 1985, s 587, and the Insolvency Act 1985, s 85(1).

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 (Scotland) Regulations 2001, SSI 2001/128 regulate LLPs by applying to them, with modifications, the appropriate provisions of this Act: see SSI 2001/128, regs 4, 6, Sch 2.

98 Meeting of creditors

(1) 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).

(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

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.

99 Directors to lay statement of affairs before creditors

(1) The directors of the company shall—

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

(b) cause that statement to be laid before the creditors' meeting under section 98; and

(c) appoint one of their number to preside at that meeting;
and it is the duty of the director so appointed to attend the meeting and preside over it.

(2) The statement as to the affairs of the company shall be verified by affidavit by some or all of the directors 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.

(3) If—

(a) the directors without reasonable excuse fail to comply with subsection (1) or (2); or

(b) any director without reasonable excuse fails to comply with subsection (1), so far as requiring him to attend and preside at the creditors' meeting,

the directors are or (as the case may be) the director is guilty of an offence and liable to a fine.

NOTES
Derivation

This section derived from the Insolvency Act 1985, s 85(4), (5), (9)(b), (c), (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.

100 Appointment of liquidator

(1) The creditors and the company at their respective meetings mentioned in section 98 may nominate a person to be liquidator for the purpose of winding up the company's affairs and distributing its assets.

(2) The liquidator shall be the person nominated by the creditors or, where no person has been so nominated, the person (if any) nominated by the company.

(3) In the case of different persons being nominated, any director, member or creditor of the company may, within 7 days after the date on which the nomination was made by the creditors, apply to the court for an order either—

(a) directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or

(b) appointing some other person to be liquidator instead of the person nominated by the creditors.

[(4) The court shall grant an application under subsection (3) made by the holder of a qualifying floating charge in respect of the company's property (within the meaning of paragraph 14 of Schedule B1) unless the court thinks it right to refuse the application because of the particular circumstances of the case.]

NOTES
Derivation

This section derived from the Companies Act 1985, s 589, and the Insolvency Act 1985, Sch 6, para 37(1), (2).

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 (4): inserted by the Enterprise Act 2002, s 248(3), Sch 17, paras 9, 14; for effect see s 249, Sch 17, para 1 thereto.

Date in force: to be appointed: see the Enterprise Act 2002, s 279.

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 appointment of a liquidator, by the Credit Institutions (Reorganisation and Winding up) Regulations 2004, SI 2004/1045, reg 9(3), (5).

101 Appointment of liquidation committee

(1) The creditors at the meeting to be held under section 98 or at any subsequent meeting may, if they think fit, appoint a committee (“the liquidation committee”) of not more than 5 persons to exercise the functions conferred on it by or under this Act.

(2) If such a committee is appointed, the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee, not exceeding 5.

(3) However, the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the liquidation committee; and if the creditors so resolve—

(a) the persons mentioned in the resolution are not then, unless the court otherwise directs, qualified to act as members of the committee; and

(b) on any application to the court under this provision the court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(4) In Scotland, the liquidation committee has, in addition to the powers and duties conferred and imposed on it by this Act, such of the powers and duties of commissioners on a bankrupt estate as may be conferred and imposed on liquidation committees by the rules.

NOTES
Derivation

This section derived from the Companies Act 1985, s 590, and the Insolvency Act 1985, Sch 6, para 38(2)–(4).

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.

102 Creditors' meeting where winding up converted under s 96

Where, in the case of a winding up which was, under section 96 in Chapter III, converted to a creditors' voluntary winding up, a creditors' meeting is held in accordance with section 95, any appointment made or committee established by that meeting is deemed to have been made or established by a meeting held in accordance with section 98 in this Chapter.

NOTES
Derivation

This section derived from the Insolvency Act 1985, s 83(7) (in part).

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 (Scotland) Regulations 2001, SSI 2001/128 regulate LLPs by applying to them, with modifications, the appropriate provisions of this Act: see SSI 2001/128, regs 4, 6, Sch 2.

103 Cesser of directors' powers

On the appointment of a liquidator, all the powers of the directors cease, except so far as the liquidation committee (or, if there is no such committee, the creditors) sanction their continuance.

NOTES
Derivation

This section derived from the Companies Act 1985, s 591(2), and the Insolvency Act 1985, Sch 6, para 39.

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.

104 Vacancy in office of liquidator

If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator (other than a liquidator appointed by, or by the direction of, the court) the creditors may fill the vacancy.

NOTES
Derivation

This section derived from the Companies Act 1985, s 592.

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 (Scotland) Regulations 2001, SSI 2001/128 regulate LLPs by applying to them, with modifications, the appropriate provisions of this Act: see SSI 2001/128, regs 4, 6, Sch 2.

105 Meetings of company and creditors at each year's end

(1) If the winding up continues for more than one year, the liquidator shall summon a general meeting of the company and a meeting of the creditors at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within 3 months from the end of the year or such longer period as the Secretary of State may allow.

(2) The liquidator shall lay before each of the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(3) If the liquidator fails to comply with this section, he is liable to a fine.

(4) Where under section 96 a members' voluntary winding up has become a creditors' voluntary winding up, and the creditors' meeting under section 95 is held 3 months or less

before the end of the first year from the commencement of the winding up, the liquidator is not required by this section to summon a meeting of creditors at the end of that year.

NOTES
Derivation

This section derived from the Companies Act 1985, s 594, and the Insolvency Act 1985, s 83(8).

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.

106 Final meeting prior to dissolution

(1) As soon as the company's affairs are fully wound up, the liquidator shall make up an account of the winding up, showing how it has been conducted and the company's property has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors for the purpose of laying the account before the meetings and giving an explanation of it.

(2) Each such meeting shall be called by advertisement in the Gazette specifying the time, place and object of the meeting, and published at least one month before it.

(3) Within one week after the date of the meetings (or, if they are not held on the same date, after the date of the later one) the liquidator shall send to the registrar of companies a copy of the account, and shall make a return to him of the holding of the meetings and of their dates.

(4) If the copy is not sent or the return is not made in accordance with subsection (3), the liquidator is liable to a fine and, for continued contravention, to a daily default fine.

(5) However, if a quorum is not present at either such meeting, the liquidator shall, in lieu of the return required by subsection (3), make a return that the meeting was duly summoned and that no quorum was present; and upon such return being made the provisions of that subsection as to the making of the return are, in respect of that meeting, deemed complied with.

(6) If the liquidator fails to call a general meeting of the company or a meeting of the creditors as required by this section, he is liable to a fine.

NOTES
Derivation

This section derived from the Companies Act 1985, s 595(1)–(5), (8).

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.
Anything directed to be done, or which may be done, to or by the registrar of companies in Scotland by virtue of sub-s (3) or (5) above, or the assistant registrar of friendly societies for Scotland by virtue of those subsections as applied in relation to friendly societies, industrial and provident societies or building societies, shall, or (as the case may be) may, also be done to or by the Accountant in Bankruptcy: see the Scotland Act 1998, s 125, Sch 8, para 23(2), (3).
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.

Investigation procedures

131 Company's statement of affairs

(1) Where the court has made a winding-up order or appointed a provisional liquidator, the official receiver may require some or all of the persons mentioned in subsection (3) below to make out and submit to him a statement in the prescribed form as to the affairs of the company.

(2) The statement shall be verified by affidavit by the persons required to submit it 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 or as the official receiver may require.

(3) The persons referred to in subsection (1) are—

(a) those who are or have been officers of the company;

(b) those who have taken part in the formation of the company at any time within one year before the relevant date;

(c) those who are in the company's employment, or have been in its employment within that year, and are in the official receiver's opinion capable of giving the information required;

(d) those who are or have been within that year officers of, or in the employment of, a company which is, or within that year was, an officer of the company.

(4) Where any persons are required under this section to submit a statement of affairs to the official receiver, they shall do so (subject to the next subsection) before the end of the period of 21 days beginning with the day after that on which the prescribed notice of the requirement is given to them by the official receiver.

(5) The official receiver, if he thinks fit, may—

(a) at any time release a person from an obligation imposed on him under subsection (1) or (2) above; or

(b) either when giving the notice mentioned in subsection (4) or subsequently, extend the period so mentioned;

and where the official receiver has refused to exercise a power conferred by this subsection, the court, if it thinks fit, may exercise it.

(6) In this section—

"employment" includes employment under a contract for services; and

"the relevant date" means—

(a) in a case where a provisional liquidator is appointed, the date of his appointment; and

(b) in a case where no such appointment is made, the date of the winding-up order.

(7) If a person without reasonable excuse fails to comply with any obligation imposed under this section, he is liable to a fine and, for continued contravention, to a daily default fine.

(8) In the application of this section to Scotland references to the official receiver are to the liquidator or, in a case where a provisional liquidator is appointed, the provisional liquidator.

NOTES
Derivation

This section derived from the Insolvency Act 1985, s 66.

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 (Scotland) Regulations 2001, SSI 2001/128 regulate LLPs by applying to them, with modifications, the appropriate provisions of this Act: see SSI 2001/128, regs 4, 6, Sch 2.

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.

236 Inquiry into company's dealings, etc

(1) This section applies as does section 234; and it also applies in the case of a company in respect of which a winding-up order has been made by the court in England and Wales as if references to the office-holder included the official receiver, whether or not he is the liquidator.

(2) The court may, on the application of the office-holder, summon to appear before it—

(a) any officer of the company,

(b) any person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or

(c) any person whom the court thinks capable of giving information concerning the promotion, formation, business, dealings, affairs or property of the company.

(3) The court may require any such person as is mentioned in subsection (2)(a) to (c) to submit an affidavit to the court containing an account of his dealings with the company or to produce any books, papers or other records in his possession or under his control relating to the company or the matters mentioned in paragraph (c) of the subsection.

(4) The following applies in a case where—

(a) a person without reasonable excuse fails to appear before the court when he is summoned to do so under this section, or

(b) there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding his appearance before the court under this section.

(5) The court may, for the purpose of bringing that person and anything in his possession before the court, cause a warrant to be issued to a constable or prescribed officer of the court—

(a) for the arrest of that person, and

(b) for the seizure of any books, papers, records, money or goods in that person's possession.

(6) The court may authorise a person arrested under such a warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until that person is brought before the court under the warrant or until such other time as the court may order.

NOTES
Derivation

This section derived from the Insolvency Act 1985, ss 95(1), (2), 100(1), (2), (6).

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 (Scotland) Regulations 2001, SSI 2001/128 regulate LLPs by applying to them, with modifications, the appropriate provisions of this Act: see SSI 2001/128, regs 4, 6, Sch 2.

Part VIII

Individual Voluntary Arrangements

Moratorium for insolvent debtor

252 Interim order of court

(1) In the circumstances specified below, the court may in the case of a debtor (being an individual) make an interim order under this section.

(2) An interim order has the effect that, during the period for which it is in force—

(a) no bankruptcy petition relating to the debtor may be presented or proceeded with,

[(aa) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises let to the debtor in respect of a failure by the debtor to comply with any term or condition of his tenancy of such premises, except with the leave of the court] and

(b) no other proceedings, and no execution or other legal process, may be commenced or continued [and no distress may be levied] against the debtor or his property except with the leave of the court.

NOTES
Derivation

This section derived from the Insolvency Act 1985, s 112(1) (in part), (3).
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.
Extent

This section does not extend to Scotland: see s 440(2)(b).
Amendment

Sub-s (2): para (aa) inserted by the Insolvency Act 2000, s 3, Sch 3, paras 1, 2(a).

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

Sub-s (2): in para (b) words “and no distress may be levied” in square brackets inserted by the Insolvency Act 2000, s 3, Sch 3, paras 1, 2(b).

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

253 Application for interim order

(1) Application to the court for an interim order may be made where the debtor intends to make a proposal [under this Part, that is, a proposal] to his creditors for a composition in satisfaction of his debts or a scheme of arrangement of his affairs (from here on referred to, in either case, as a “voluntary arrangement”).

(2) The proposal must provide for some person (“the nominee”) to act in relation to the voluntary arrangement either as trustee or otherwise for the purpose of supervising its implementation [and the nominee must be a person who is qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement].

(3) Subject as follows, the application may be made—

(a) if the debtor is an undischarged bankrupt, by the debtor, the trustee of his estate, or the official receiver, and

(b) in any other case, by the debtor.

(4) An application shall not be made under subsection (3)(*a*) unless the debtor has given notice of [the proposal] to the official receiver and, if there is one, the trustee of his estate.

(5) An application shall not be made while a bankruptcy petition presented by the debtor is pending, if the court has, under section 273 below, appointed an insolvency practitioner to inquire into the debtor's affairs and report.

NOTES
Derivation

This section derived from the Insolvency Act 1985, ss 110, 111(1), (2), (3) (in part).
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.
Extent

This section does not extend to Scotland: see s 440(2)(b).
Amendment

Sub-s (1): words “under this Part, that is, a proposal” in square brackets inserted by the Insolvency Act 2000, s 3, Sch 3, paras 1, 3(a).

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

Sub-s (2): words from “and the nominee” to “the voluntary arrangement” in square brackets inserted by the Insolvency Act 2000, s 3, Sch 3, paras 1, 3(b).

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

Sub-s (4): words “the proposal” in square brackets substituted by the Insolvency Act 2000, s 3, Sch 3, paras 1, 3(c).

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

254 Effect of application

(1) At any time when an application under section 253 for an interim order is pending,

[(a) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises let to the debtor in respect of a failure by the debtor to comply with any term or condition of his tenancy of such premises, except with the leave of the court, and

(b)] the court may [forbid the levying of any distress on the debtor's property or its subsequent sale, or both, and] stay any action, execution or other legal process against the property or person of the debtor.

(2) Any court in which proceedings are pending against an individual may, on proof that an application under that section has been made in respect of that individual, either stay the proceedings or allow them to continue on such terms as it thinks fit.

NOTES
Derivation

This section derived from the Insolvency Act 1985, s 111(4), (5).
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.
Extent

This section does not extend to Scotland: see s 440(2)(b).
Amendment

Sub-s (1): para (a) and subsequent reference to “(b)” inserted by the Insolvency Act 2000, s 3, Sch 3, paras 1, 4(a).

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

Sub-s (1): in para (b) words “forbid the levying of any distress on the debtor's property or its subsequent sale, or both, and” in square brackets inserted by the Insolvency Act 2000, s 3, Sch 3, paras 1, 4(b).

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

255 Cases in which interim order can be made

(1) The court shall not make an interim order on an application under section 253 unless it is satisfied—

(a) that the debtor intends to make [a proposal under this Part];

(b) that on the day of the making of the application the debtor was an undischarged bankrupt or was able to petition for his own bankruptcy;

(c) that no previous application has been made by the debtor for an interim order in the period of 12 months ending with that day; and

(d) that the nominee under the debtor's proposal . . . is willing to act in relation to the proposal.

(2) The court may make an order if it thinks that it would be appropriate to do so for the purpose of facilitating the consideration and implementation of the debtor's proposal.

(3) Where the debtor is an undischarged bankrupt, the interim order may contain provision as to the conduct of the bankruptcy, and the administration of the bankrupt's estate, during the period for which the order is in force.

(4) Subject as follows, the provision contained in an interim order by virtue of subsection (3) may include provision staying proceedings in the bankruptcy or modifying any provision in this Group of Parts, and any provision of the rules in their application to the debtor's bankruptcy.

(5) An interim order shall not, in relation to a bankrupt, make provision relaxing or removing any of the requirements of provisions in this Group of Parts, or of the rules, unless the court is satisfied that that provision is unlikely to result in any significant diminution in, or in the value of, the debtor's estate for the purposes of the bankruptcy.

(6) Subject to the following provisions of this Part, and interim order made on an application under section 253 ceases to have effect at the end of the period of 14 days beginning with the day after the making of the order.

NOTES

Derivation

This section derived from the Insolvency Act 1985, s 112.

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.

Extent

This section does not extend to Scotland: see s 440(2)(b).

Amendment

Sub-s (1): in para (a) words “a proposal under this Part” in square brackets substituted by the Insolvency Act 2000, s 3, Sch 3, paras 1, 5(a).

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

Sub-s (1): in para (d) words omitted repealed by the Insolvency Act 2000, ss 3, 15(1), Sch 3, paras 1, 5(b), Sch 5.

256 Nominee's report on debtor's proposal

(1) Where an interim order has been made on an application under section 253, the nominee shall, before the order ceases to have effect, submit a report to the court stating—

(a) [whether, in his opinion, the voluntary arrangement which the debtor is proposing has a reasonable prospect of being approved and implemented,

(aa)] whether, in his opinion, a meeting of the debtor's creditors should be summoned to consider the debtor's proposal, and

(b) if in his opinion such a meeting should be summoned, the date on which, and time and place at which, he proposes the meeting should be held.

(2) For the purpose of enabling the nominee to prepare his report the debtor shall submit to the nominee—

(a) a document setting out the terms of the voluntary arrangement which the debtor is proposing, and

(b) a statement of his affairs containing—

(i) such particulars of his creditors and of his debts and other liabilities and of his assets as may be prescribed, and

(ii) such other information as may be prescribed.

[(3) The court may—

(a) on an application made by the debtor in a case where the nominee has failed to submit the report required by this section or has died, or

(b) on an application made by the debtor or the nominee in a case where it is impracticable or inappropriate for the nominee to continue to act as such,

direct that the nominee shall be replaced as such by another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.

(3A) The court may, on an application made by the debtor in a case where the nominee has failed to submit the report required by this section, direct that the interim order shall continue, or (if it has ceased to have effect) be renewed, for such further period as the court may specify in the direction.]

(4) The court may, on the application of the nominee, extend the period for which the interim order has effect so as to enable the nominee to have more time to prepare his report.

(5) If the court is satisfied on receiving the nominee's report that a meeting of the debtor's creditors should be summoned to consider the debtor's proposal, the court shall direct that the period for which the interim order has effect shall be extended, for such further period as it may specify in the direction, for the purpose of enabling the debtor's proposal to be considered by his creditors in accordance with the following provisions of this Part.

(6) The court may discharge the interim order if it is satisfied, on the application of the nominee—

(a) that the debtor has failed to comply with his obligations under subsection (2), or

(b) that for any other reason it would be inappropriate for a meeting of the debtor's creditors to be summoned to consider the debtor's proposal.

NOTES
Derivation

This section derived from the Insolvency Act 1985, s 113.
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.
Extent

This section does not extend to Scotland: see s 440(2)(b).
Amendment

Sub-s (1): in para (a) words from “whether, in his” to “approved and implemented,” and subsequent reference to “(aa)” in square brackets inserted by the Insolvency Act 2000, s 3, Sch 3, paras 1, 6(a).

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

Sub-ss (3), (3A): substituted, for sub-s (3) as originally enacted, by the Insolvency Act 2000, s 3, Sch 3, paras 1, 6(b).

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

Procedure where no interim order made

NOTES
Amendment

Inserted by the Insolvency Act 2000, s 3, Sch 3, paras 1, 7.

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

256A Debtor's proposal and nominee's report

(1) This section applies where a debtor (being an individual)—

(a) intends to make a proposal under this Part (but an interim order has not been made in relation to the proposal and no application for such an order is pending), and

(b) if he is an undischarged bankrupt, has given notice of the proposal to the official receiver and, if there is one, the trustee of his estate,

unless a bankruptcy petition presented by the debtor is pending and the court has, under section 273, appointed an insolvency practitioner to inquire into the debtor's affairs and report.

(2) For the purpose of enabling the nominee to prepare a report to the court, the debtor shall submit to the nominee—

(a) a document setting out the terms of the voluntary arrangement which the debtor is proposing, and

(b) a statement of his affairs containing—

(i) such particulars of his creditors and of his debts and other liabilities and of his assets as may be prescribed, and

(ii) such other information as may be prescribed.

(3) If the nominee is of the opinion that the debtor is an undischarged bankrupt, or is able to petition for his own bankruptcy, the nominee shall, within 14 days (or such longer period as the court may allow) after receiving the document and statement mentioned in subsection (2), submit a report to the court stating—

(a) whether, in his opinion, the voluntary arrangement which the debtor is proposing has a reasonable prospect of being approved and implemented,

(b) whether, in his opinion, a meeting of the debtor's creditors should be summoned to consider the debtor's proposal, and

(c) if in his opinion such a meeting should be summoned, the date on which, and time and place at which, he proposes the meeting should be held.

(4) The court may—

(a) on an application made by the debtor in a case where the nominee has failed to submit the report required by this section or has died, or

(b) on an application made by the debtor or the nominee in a case where it is impracticable or inappropriate for the nominee to continue to act as such,

direct that the nominee shall be replaced as such by another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.

(5) The court may, on an application made by the nominee, extend the period within which the nominee is to submit his report.

NOTES
Extent

This section does not extend to Scotland: see s 440(2)(b).
Amendment

Inserted by the Insolvency Act 2000, s 3, Sch 3, paras 1, 7.

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

257 Summoning of creditors' meeting

(1) Where it has been reported to the court under section 256 or 256A that a meeting of the debtor's creditors should be summoned, the nominee (or his replacement under section 256(3) or 256A(4)) shall, unless the court otherwise directs, summon that meeting for the time, date and place proposed in his report.

(2) The persons to be summoned to the meeting are every creditor of the debtor of whose claim and address the person summoning the meeting is aware.

(3) For this purpose the creditors of a debtor who is an undischarged bankrupt include—

(a) every person who is a creditor of the bankrupt in respect of a bankruptcy debt, and

(b) every person who would be such a creditor if the bankruptcy had commenced on the day on which notice of the meeting is given.

NOTES
Derivation

This section derived from the Insolvency Act 1985, s 114(1) (in part), (2), (3).
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.
Extent

This section does not extend to Scotland: see s 440(2)(b).
Amendment

Sub-s (1): words "or 256A" in square brackets inserted by the Insolvency Act 2000, s 3, Sch 3, paras 1, 8(a).

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

Sub-s (1): words "256(3) or 256A(4)" in square brackets substituted by the Insolvency Act 2000, s 3, Sch 3, paras 1, 8(b).

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

Consideration and implementation of debtor's proposal

258 Decisions of creditors' meeting

(1) A creditors' meeting summoned under section 257 shall decide whether to approve the proposed voluntary arrangement.

(2) The meeting may approve the proposed voluntary arrangement with modifications, but shall not do so unless the debtor consents to each modification.

(3) The modifications subject to which the proposed voluntary arrangement may be approved may include one conferring the functions proposed to be conferred on the nominee on another person qualified to act as an insolvency practitioner or authorised to act as nominee, in relation to the voluntary arrangement.

But they shall not include any modification by virtue of which the proposal ceases to be a proposal under this Part.

(4) The meeting shall not approve any proposal or modification which affects the right of a secured creditor of the debtor to enforce his security, except with the concurrence of the creditor concerned.

(5) Subject as follows, the meeting shall not approve any proposal or modification under which—

> (a) any preferential debt of the debtor is to be paid otherwise than in priority to such of his debts as are not preferential debts, or
>
> (b) a preferential creditor of the debtor is to be paid an amount in respect of a preferential debt that bears to that debt a smaller proportion than is borne to another preferential debt by the amount that is to be paid in respect of that other debt.

However, the meeting may approve such a proposal or modification with the concurrence of the preferential creditor concerned.

(6) Subject as above, the meeting shall be conducted in accordance with the rules.

(7) In this section “preferential debt” has the meaning given by section 386 in Part XII; and “preferential creditor” is to be construed accordingly.

NOTES
Derivation

This section derived from the Insolvency Act 1985, s 115(1)–(6), (9).
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.
Extent

This section does not extend to Scotland: see s 440(2)(b).
Amendment

Sub-s (3): words “or authorised to act as nominee, in relation to the voluntary arrangement” in square brackets substituted by the Insolvency Act 2000, s 3, Sch 3, paras 1, 9.

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

Sub-s (3): words “under this Part” in square brackets substituted by the Insolvency Act 2000, s 3, Sch 3, paras 1, 9.

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.
See Further

See further, in relation to the application of this section, with modifications, in respect of the Lloyd's of London insurance market: the Insurers (Reorganisation and Winding Up) Regulations 2004, SI 2004/353, regs 32, 33 (as modified by SI 2005/1998, regs 32, 40(1)–(4), (11)).

259 Report of decisions to court

(1) After the conclusion in accordance with the rules of the meeting summoned under section 257, the chairman of the meeting shall report the result of it to the court and, immediately after so reporting, shall give notice of the result of the meeting to such persons as may be prescribed.

(2) If the report is that the meeting has declined (with or without modifications) to approve the debtor's proposal, the court may discharge any interim order which is in force in relation to the debtor.

NOTES
Derivation

This section derived from the Insolvency Act 1985, s 115(7), (8).
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.
Extent

This section does not extend to Scotland: see s 440(2)(b).

260 Effect of approval

(1) This section has effect where the meeting summoned under section 257 approves the proposed voluntary arrangement (with or without modifications).

(2) The approved arrangement—

(a) takes effect as if made by the debtor at the meeting, and

(b) binds every person who in accordance with the rules—

(i) was entitled to vote at the meeting (whether or not he was present or represented at it), or

(ii) would have been so entitled if he had had notice of it,

as if he were a party to the arrangement.

(2A) If—

(a) when the arrangement ceases to have effect any amount payable under the arrangement to a person bound by virtue of subsection (2)(b)(ii) has not been paid, and

(b) the arrangement did not come to an end prematurely,

the debtor shall at that time become liable to pay to that person the amount payable under the arrangement.

(3) The Deeds of Arrangement Act 1914 does not apply to the approved voluntary arrangement.

(4) Any interim order in force in relation to the debtor immediately before the end of the period of 28 days beginning with the day on which the report with respect to the creditors' meeting was made to the court under section 259 ceases to have effect at the end of that period.

This subsection applies except to such extent as the court may direct for the purposes of any application under section 262 below.

(5) Where proceedings on a bankruptcy petition have been stayed by an interim order which ceases to have effect under subsection (4), the petition is deemed, unless the court otherwise orders, to have been dismissed.

NOTES
Derivation

This section derived from the Insolvency Act 1985, s 116(1)–(3), (6), (7).
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.
Extent

This section does not extend to Scotland: see s 440(2)(b).
Amendment

Sub-s (2): para (b) substituted, together with sub-s (2A), by the Insolvency Act 2000, s 3, Sch 3, paras 1, 10.

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

Sub-s (2A): substituted, together with sub-s (2)(b), for sub-s (2)(b) as originally enacted, by the Insolvency Act 2000, s 3, Sch 3, paras 1, 10.

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

261 Additional effect on undischarged bankrupt

(1) This section applies where—

(a) the creditors' meeting summoned under section 257 approves the proposed voluntary arrangement (with or without modifications), and

(b) the debtor is an undischarged bankrupt.

(2) Where this section applies the court shall annul the bankruptcy order on an application made—

(a) by the bankrupt, or

(b) where the bankrupt has not made an application within the prescribed period, by the official receiver.

(3) An application under subsection (2) may not be made—

(a) during the period specified in section 262(3)(a) during which the decision of the creditors' meeting can be challenged by application under section 262,

(b) while an application under that section is pending, or

(c) while an appeal in respect of an application under that section is pending or may be brought.

(4) Where this section applies the court may give such directions about the conduct of the bankruptcy and the administration of the bankrupt's estate as it thinks appropriate for facilitating the implementation of the approved voluntary arrangement.

NOTES

Derivation

This section derived from the Insolvency Act 1985, s 116(4), (5).

Extent

This section does not extend to Scotland: see s 440(2)(b).

Amendment

Substituted by the Enterprise Act 2002, s 264(1), Sch 22, para 1.

Date in force: 1 April 2004: see SI 2003/2093, art 2(2), Sch 2.

262 Challenge of meeting's decision

(1) Subject to this section, an application to the court may be made, by any of the persons specified below, on one or both of the following grounds, namely—

(a) that a voluntary arrangement approved by a creditors' meeting summoned under section 257 unfairly prejudices the interests of a creditor of the debtor;

(b) that there has been some material irregularity at or in relation to such a meeting.

(2) The persons who may apply under this section are—

(a) the debtor;

(b) a person who—

(i) was entitled, in accordance with the rules, to vote at the creditors' meeting, or

(ii) would have been so entitled if he had had notice of it;

(c) the nominee (or his replacement under section 256(3), 256A(4) or 258(3)); and

(d) if the debtor is an undischarged bankrupt, the trustee of his estate or the official receiver.

(3) An application under this section shall not be made—

(a) after the end of the period of 28 days beginning with the day on which the report of the creditors' meeting was made to the court under section 259, or

(b) in the case of a person who was not given notice of the creditors' meeting, after the end of the period of 28 days beginning with the day on which he became aware that the meeting had taken place,

but (subject to that) an application made by a person within subsection (2)(b)(ii) on the ground that the arrangement prejudices his interests may be made after the arrangement has ceased to have effect, unless it has come to an end prematurely.

(4) Where on an application under this section the court is satisfied as to either of the grounds mentioned in subsection (1), it may do one or both of the following, namely—

(a) revoke or suspend any approval given by the meeting;

(b) give a direction to any person for the summoning of a further meeting of the debtor's creditors to consider any revised proposal he may make or, in a case falling within subsection (1)(b), to reconsider his original proposal.

(5) Where at any time after giving a direction under subsection (4)(b) for the summoning of a meeting to consider a revised proposal the court is satisfied that the debtor does not intend to submit such a proposal, the court shall revoke the direction and revoke or suspend any approval given at the previous meeting.

(6) Where the court gives a direction under subsection (4)(b), it may also give a direction continuing or, as the case may require, renewing, for such period as may be specified in the direction, the effect in relation to the debtor of any interim order.

(7) In any case where the court, on an application made under this section with respect to a creditors' meeting, gives a direction under subsection (4)(b) or revokes or suspends an approval under subsection (4)(a) or (5), the court may give such supplemental directions as it thinks fit and, in particular, directions with respect to—

(a) things done since the meeting under any voluntary arrangement approved by the meeting, and

(b) such things done since the meeting as could not have been done if an interim order had been in force in relation to the debtor when they were done.

(8) Except in pursuance of the preceding provisions of this section, an approval given at a creditors' meeting summoned under section 257 is not invalidated by any irregularity at or in relation to the meeting.

NOTES
Derivation

This section derived from the Insolvency Act 1985, s 117.
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.
Extent

This section does not extend to Scotland: see s 440(2)(b).
Amendment

Sub-s (2): para (b) substituted by the Insolvency Act 2000, s 3, Sch 3, paras 1, 11(1)(a).

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

Sub-s (2): in para (c) reference to "256(3), 256A(4)" in square brackets substituted by the Insolvency Act 2000, s 3, Sch 3, paras 1, 11(1)(b).

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

Sub-s (3): reference to "(a)" in square brackets inserted by the Insolvency Act 2000, s 3, Sch 3, paras 1, 11(2)(a).

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

Sub-s (3): para (b) and word "or" immediately preceding it and words from "but (subject to that)" to "an end prematurely" in square brackets inserted by the Insolvency Act 2000, s 3, Sch 3, paras 1, 11(2)(b).

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

262A False representations etc

(1) If for the purpose of obtaining the approval of his creditors to a proposal for a voluntary arrangement, the debtor—

(a) makes any false representation, or

(b) fraudulently does, or omits to do, anything,

he commits an offence.

(2) Subsection (1) applies even if the proposal is not approved.

(3) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.
NOTES
Extent

This section does not extend to Scotland: see s 440(2)(b).
Amendment

Inserted by the Insolvency Act 2000, s 3, Sch 3, paras 1, 12.

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

262B Prosecution of delinquent debtors

(1) This section applies where a voluntary arrangement approved by a creditors' meeting summoned under section 257 has taken effect.

(2) If it appears to the nominee or supervisor that the debtor has been guilty of any offence in connection with the arrangement for which he is criminally liable, he shall forthwith—

(a) report the matter to the Secretary of State, and

(b) provide the Secretary of State with such information and give the Secretary of State such access to and facilities for inspecting and taking copies of documents (being information or documents in his possession or under his control and relating to the matter in question) as the Secretary of State requires.

(3) Where a prosecuting authority institutes criminal proceedings following any report under subsection (2), the nominee or, as the case may be, supervisor shall give the authority all assistance in connection with the prosecution which he is reasonably able to give.

For this purpose, “prosecuting authority” means the Director of Public Prosecutions or the Secretary of State.

(4) The court may, on the application of the prosecuting authority, direct a nominee or supervisor to comply with subsection (3) if he has failed to do so.

NOTES
Extent

This section does not extend to Scotland: see s 440(2)(b).
Amendment

Inserted by the Insolvency Act 2000, s 3, Sch 3, paras 1, 12.

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

262C Arrangements coming to an end prematurely

For the purposes of this Part, a voluntary arrangement approved by a creditors' meeting summoned under section 257 comes to an end prematurely if, when it ceases to have effect, it has not been fully implemented in respect of all persons bound by the arrangement by virtue of section 260(2)(b)(i).

NOTES
Extent

This section does not extend to Scotland: see s 440(2)(b).
Amendment

Inserted by the Insolvency Act 2000, s 3, Sch 3, paras 1, 12.

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

263 Implementation and supervision of approved voluntary arrangement

(1) This section applies where a voluntary arrangement approved by a creditors' meeting summoned under section 257 has taken effect.

(2) The person who is for the time being carrying out, in relation to the voluntary arrangement, the functions conferred by virtue of the approval on the nominee (or his replacement under section 256(3), 256A(4) or 258(3)) shall be known as the supervisor of the voluntary arrangement.

(3) If the debtor, any of his creditors or any other person is dissatisfied by any act, omission or decision of the supervisor, he may apply to the court; and on such an application the court may—

(a) confirm, reverse or modify any act or decision of the supervisor,

(b) give him directions, or

(c) make such other order as it thinks fit.

(4) The supervisor may apply to the court for directions in relation to any particular matter arising under the voluntary arrangement.

(5) The court may, whenever—

(a) it is expedient to appoint a person to carry out the functions of the supervisor, and

(b) it is inexpedient, difficult or impracticable for an appointment to be made without the assistance of the court,

make an order appointing a person who is qualified to act as an insolvency practitioner or authorised to act as supervisor, in relation to the voluntary arrangement, either in substitution for the existing supervisor or to fill a vacancy.

This is without prejudice to section 41(2) of the Trustee Act 1925 (power of court to appoint trustees of deeds of arrangement).

(6) The power conferred by subsection (5) is exercisable so as to increase the number of persons exercising the functions of the supervisor or, where there is more than one person exercising those functions, so as to replace one or more of those persons.

NOTES
Derivation

This section derived from the Insolvency Act 1985, s 118.
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.
Extent

This section does not extend to Scotland: see s 440(2)(b).
Amendment

Sub-s (2): reference to "256(3), 256A(4)" in square brackets substituted by the Insolvency Act 2000, s 3, Sch 3, paras 1, 13(a).

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

Sub-s (5): words "or authorised to act as supervisor, in relation to the voluntary arrangement" in square brackets substituted by the Insolvency Act 2000, s 3, Sch 3, paras 1, 13(b).

Date in force: 1 January 2003: see SI 2002/2711, art 2; for transitional provisions see art 4 thereof.

Fast-track voluntary arrangements

NOTES
Amendment

Inserted by the Enterprise Act 2002, s 264(1), Sch 22, para 2.

Date in force: 1 April 2004: see SI 2003/2093, art 2(2), Sch 2.

263A Availability

Section 263B applies where an individual debtor intends to make a proposal to his creditors for a voluntary arrangement and—

(a) the debtor is an undischarged bankrupt,

(b) the official receiver is specified in the proposal as the nominee in relation to the voluntary arrangement, and

(c) no interim order is applied for under section 253.

NOTES
Extent

This section does not extend to Scotland: see s 440(2)(b).
Amendment

Inserted by the Enterprise Act 2002, s 264(1), Sch 22, para 2.

Date in force: 1 April 2004: see SI 2003/2093, art 2(2), Sch 2.

263B Decision

(1) The debtor may submit to the official receiver—

(a) a document setting out the terms of the voluntary arrangement which the debtor is proposing, and

(b) a statement of his affairs containing such particulars as may be prescribed of his creditors, debts, other liabilities and assets and such other information as may be prescribed.

(2) If the official receiver thinks that the voluntary arrangement proposed has a reasonable prospect of being approved and implemented, he may make arrangements for inviting creditors to decide whether to approve it.

(3) For the purposes of subsection (2) a person is a "creditor" only if—

(a) he is a creditor of the debtor in respect of a bankruptcy debt, and

(b) the official receiver is aware of his claim and his address.

(4) Arrangements made under subsection (2)—

(a) must include the provision to each creditor of a copy of the proposed voluntary arrangement,

(b) must include the provision to each creditor of information about the criteria by reference to which the official receiver will determine whether the creditors approve or reject the proposed voluntary arrangement, and

(c) may not include an opportunity for modifications to the proposed voluntary arrangement to be suggested or made.

(5) Where a debtor submits documents to the official receiver under subsection (1) no application under section 253 for an interim order may be made in respect of the debtor until the official receiver has—

(a) made arrangements as described in subsection (2), or

(b) informed the debtor that he does not intend to make arrangements (whether because he does not think the voluntary arrangement has a reasonable prospect of being approved and implemented or because he declines to act).

NOTES
Extent

This section does not extend to Scotland: see s 440(2)(b).
Amendment

Inserted by the Enterprise Act 2002, s 264(1), Sch 22, para 2.

Date in force: 1 April 2004: see SI 2003/2093, art 2(2), Sch 2.

263C Result

As soon as is reasonably practicable after the implementation of arrangements under section 263B(2) the official receiver shall report to the court whether the proposed voluntary arrangement has been approved or rejected.

NOTES

Extent

This section does not extend to Scotland: see s 440(2)(b).

Amendment

Inserted by the Enterprise Act 2002, s 264(1), Sch 22, para 2.

Date in force: 1 April 2004: see SI 2003/2093, art 2(2), Sch 2.

263D Approval of voluntary arrangement

(1) This section applies where the official receiver reports to the court under section 263C that a proposed voluntary arrangement has been approved.

(2) The voluntary arrangement—

(a) takes effect,

(b) binds the debtor, and

(c) binds every person who was entitled to participate in the arrangements made under section 263B(2).

(3) The court shall annul the bankruptcy order in respect of the debtor on an application made by the official receiver.

(4) An application under subsection (3) may not be made—

(a) during the period specified in section 263F(3) during which the voluntary arrangement can be challenged by application under section 263F(2),

(b) while an application under that section is pending, or

(c) while an appeal in respect of an application under that section is pending or may be brought.

(5) The court may give such directions about the conduct of the bankruptcy and the administration of the bankrupt's estate as it thinks appropriate for facilitating the implementation of the approved voluntary arrangement.

(6) The Deeds of Arrangement Act 1914 (c 47) does not apply to the voluntary arrangement.

(7) A reference in this Act or another enactment to a voluntary arrangement approved under this Part includes a reference to a voluntary arrangement which has effect by virtue of this section.

NOTES

Extent

This section does not extend to Scotland: see s 440(2)(b).
Amendment

Inserted by the Enterprise Act 2002, s 264(1), Sch 22, para 2.

Date in force: 1 April 2004: see SI 2003/2093, art 2(2), Sch 2.

263E Implementation

Section 263 shall apply to a voluntary arrangement which has effect by virtue of section 263D(2) as it applies to a voluntary arrangement approved by a creditors' meeting.
NOTES
Extent

This section does not extend to Scotland: see s 440(2)(b).
Amendment

Inserted by the Enterprise Act 2002, s 264(1), Sch 22, para 2.

Date in force: 1 April 2004: see SI 2003/2093, art 2(2), Sch 2.

263F Revocation

(1) The court may make an order revoking a voluntary arrangement which has effect by virtue of section 263D(2) on the ground—

(a) that it unfairly prejudices the interests of a creditor of the debtor, or

(b) that a material irregularity occurred in relation to the arrangements made under section 263B(2).

(2) An order under subsection (1) may be made only on the application of—

(a) the debtor,

(b) a person who was entitled to participate in the arrangements made under section 263B(2),

(c) the trustee of the bankrupt's estate, or

(d) the official receiver.

(3) An application under subsection (2) may not be made after the end of the period of 28 days beginning with the date on which the official receiver makes his report to the court under section 263C.

(4) But a creditor who was not made aware of the arrangements under section 263B(2) at the time when they were made may make an application under subsection (2) during the period of 28 days beginning with the date on which he becomes aware of the voluntary arrangement.
This section does not extend to Scotland: see s 440(2)(b).
Amendment

Inserted by the Enterprise Act 2002, s 264(1), Sch 22, para 2.

Date in force: 1 April 2004: see SI 2003/2093, art 2(2), Sch 2.

263G Offences

(1) Section 262A shall have effect in relation to obtaining approval to a proposal for a voluntary arrangement under section 263D.

(2) Section 262B shall have effect in relation to a voluntary arrangement which has effect by virtue of section 263D(2) (for which purposes the words “by a creditors' meeting summoned under section 257” shall be disregarded).

NOTES

Extent

This section does not extend to Scotland: see s 440(2)(b).

Amendment

Inserted by the Enterprise Act 2002, s 264(1), Sch 22, para 2.

Date in force: 1 April 2004: see SI 2003/2093, art 2(2), Sch 2.

366 Inquiry into bankrupt's dealings and property

(1) At any time after a bankruptcy order has been made the court may, on the application of the official receiver or the trustee of the bankrupt's estate, summon to appear before it—

(a) the bankrupt or the bankrupt's spouse or former spouse [or civil partner or former civil partner],

(b) any person known or believed to have any property comprised in the bankrupt's estate in his possession or to be indebted to the bankrupt,

(c) any person appearing to the court to be able to give information concerning the bankrupt or the bankrupt's dealings, affairs or property.

The court may require any such person as is mentioned in paragraph (b) or (c) to submit an affidavit to the court containing an account of his dealings with the bankrupt or to produce any documents in his possession or under his control relating to the bankrupt or the bankrupt's dealings, affairs or property.

(2) Without prejudice to section 364, the following applies in a case where—

(a) a person without reasonable excuse fails to appear before the court when he is summoned to do so under this section, or

(b) there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding his appearance before the court under this section.

(3) The court may, for the purpose of bringing that person and anything in his possession before the court, cause a warrant to be issued to a constable or prescribed officer of the court—

(a) for the arrest of that person, and

(b) for the seizure of any books, papers, records, money or goods in that person's possession.

(4) The court may authorise a person arrested under such a warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until that person is brought before the court under the warrant or until such other time as the court may order.

NOTES
Derivation

This section derived from the Insolvency Act 1985, s 196(1), (2).

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.
Extent

This section does not extend to Scotland: see s 440(2)(b).

Amendment

Sub-s (1): in para (a) words "or civil partner or former civil partner" in square brackets inserted by the Civil Partnership Act 2004, s 261(1), Sch 27, para 120.

Date in force: 5 December 2005: see SI 2005/3175, art 2(2).

436 Expressions used generally

In this Act, except in so far as the context otherwise requires (and subject to Parts VII and XI)—

"the appointed day" means the day on which this Act comes into force under section 443;

"associate" has the meaning given by section 435;

"business" includes a trade or profession;

"the Companies Act" means the Companies Act 1985;

["the Companies Acts" means the Companies Acts (as defined in section 2 of the Companies Act 2006) as they have effect in Great Britain;]

"conditional sale agreement" and "hire-purchase agreement" have the same meanings as in the Consumer Credit Act 1974;

["distress" includes use of the procedure in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007, and references to levying distress, seizing goods and related expressions shall be construed accordingly;]

["the EC Regulation" means Council Regulation (EC) No 1346/2000;]

["EEA State" means a state that is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993;]

"modifications" includes additions, alterations and omissions and cognate expressions shall be construed accordingly;

"property" includes money, goods, things in action, land and every description of property wherever situated and also obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property;

"records" includes computer records and other non-documentary records;

"subordinate legislation" has the same meaning as in the Interpretation Act 1978; and

"transaction" includes a gift, agreement or arrangement, and references to entering into a transaction shall be construed accordingly.

NOTES
Derivation

This section derived from the Insolvency Act 1985, s 232 (in part).

Initial Commencement
Royal Assent

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 1996 (being the day on which the Insolvency Act 1985, Pt III came into force): see SI 1986/1924, art 3.

Amendment

Definition "the Companies Acts" inserted by SI 2007/2194, art 10(1), (2), Sch 4, Pt 3, para 45.

Date in force: 1 October 2007: see SI 2007/2194, art 1(3)(a); for savings see art 12 thereof.

Definition "distress" inserted by the Tribunals, Courts and Enforcement Act 2007, s 62(3), Sch 13, para 85.

Date in force: to be appointed: see the Tribunals, Courts and Enforcement Act 2007, s 148(5).

Definition "the EC Regulation" inserted by SI 2002/1037, regs 2, 4.

Date in force: 3 May 2002: see SI 2002/1037, reg 1(1).

Definition "EEA State" inserted by SI 2005/879, reg 2(1), (3).

Date in force: 13 April 2005: see SI 2005/879, reg 1(1); for effect see reg 3 thereof.

Modification

Modified, in relation to insolvent partnerships, by the Insolvent Partnerships Order 1994, SI 1994/2421, art 2(1), (2).
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.

[436A Proceedings under EC Regulation: modified definition of property]

[In the application of this Act to proceedings by virtue of Article 3 of the EC Regulation, a reference to property is a reference to property which may be dealt with in the proceedings.]

NOTES
Amendment

Inserted by SI 2002/1240, regs 3, 18.

Date in force: 31 May 2002: see SI 2002/1240, reg 1.

[SCHEDULE B1
Administration]

NOTES
Amendment

Inserted by the Enterprise Act 2002, s 248(2), Sch 16.

Date in force: 15 September 2003: see SI 2003/2093, art 2(1), Sch 1; for transitional provisions and effect see art 3(1), (2)(a), (3) thereof and the Enterprise Act 2002, s 249, Sch 17, para 1.

111 Interpretation

(1) In this Schedule—

"administrative receiver" has the meaning given by section 251,

"administrator" has the meaning given by paragraph 1 and, where the context requires, includes a reference to a former administrator,

. . .

"correspondence" includes correspondence by telephonic or other electronic means,

"creditors' meeting" has the meaning given by paragraph 50,

"enters administration" has the meaning given by paragraph 1,

"floating charge" means a charge which is a floating charge on its creation,

"in administration" has the meaning given by paragraph 1,

"hire-purchase agreement" includes a conditional sale agreement, a chattel leasing agreement and a retention of title agreement,

"holder of a qualifying floating charge" in respect of a company's property has the meaning given by paragraph 14,

"market value" means the amount which would be realised on a sale of property in the open market by a willing vendor,

"the purpose of administration" means an objective specified in paragraph 3, and

"unable to pay its debts" has the meaning given by section 123.

[(1A) In this Schedule, "company" means—

(a) a company within the meaning of section 735(1) of the Companies Act 1985,

(b) a company incorporated in an EEA State other than the United Kingdom, or

(c) a company not incorporated in an EEA State but having its centre of main interests in a member State other than Denmark.

(1B) In sub-paragraph (1A), in relation to a company, "centre of main interests" has the same meaning as in the EC Regulation and, in the absence of proof to the contrary, is presumed to be the place of its registered office (within the meaning of that Regulation).]

(2) A reference in this Schedule to a thing in writing includes a reference to a thing in electronic form.

(3) In this Schedule a reference to action includes a reference to inaction.

NOTES

Para 111: in sub-para (1) definition "company" (omitted) repealed by SI 2005/879, reg 2(1), (4)(a).

Date in force: 13 April 2005: see SI 2005/879, reg 1(1); for effect see reg 3 thereof.

Para 111: sub-paras (1A), (1B) inserted by SI 2005/879, reg 2(1), (4)(b).

Date in force: 13 April 2005: see SI 2005/879, reg 1(1); for effect see reg 3 thereof.

SCHEDULE 4

Powers of Liquidator in a Winding Up

Part I

Powers Exercisable with Sanction

1. Power to pay any class of creditors in full.

2. Power to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim (present or future, certain or contingent, ascertained or sounding only in damages) against the company, or whereby the company may be rendered liable.

3. Power to compromise, on such terms as may be agreed—

(a) all calls and liabilities to calls, all debts and liabilities capable of resulting in debts, and all claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and

(b) all questions in any way relating to or affecting the assets or the winding up of the company,

and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect of it.

[3A. Power to bring legal proceedings under section 213, 214, 238, 239, 242, 243 or 423.]

NOTES
Derivation

This Part derived from the Companies Act 1985, ss 539(1)(d)-(f), 598(1).

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

Para 3A: inserted by the Enterprise Act 2002, s 253.

Date in force: 15 September 2003: see SI 2003/2093, art 2(1), Sch 1; for transitional provisions see art 5 thereof.

Modification

The Limited Liability Partnerships Act 2000 provides for the creation of Limited Liability Partnerships (LLPs). 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 SSI 2001/128, regs 4, 6, Sch 2.

Part II

Powers Exercisable without Sanction in Voluntary Winding Up, with Sanction in Winding Up by the Court

4. Power to bring or defend any action or other legal proceeding in the name and on behalf of the company.

5. Power to carry on the business of the company so far as may be necessary for its beneficial winding up.

NOTES
Derivation

This Part derived from the Companies Act 1985, ss 539(1)(a), (b), 598(2).
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

The Limited Liability Partnerships Act 2000 provides for the creation of Limited Liability Partnerships (LLPs). 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 SSI 2001/128, regs 4, 6, Sch 2.

Part III
Powers Exercisable Without Sanction in any Winding Up

6. Power to sell any of the company's property by public auction or private contract with power to transfer the whole of it to any person or to sell the same in parcels.

7. Power to do all acts and execute, in the name and on behalf of the company, all deeds, receipts and other documents and for that purpose to use, when necessary, the company's seal.

8. Power to prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributory for any balance against his estate, and to receive dividends in the bankruptcy, insolvency or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors.

9. Power to draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the company's liability as if the bill or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business.

10. Power to raise on the security of the assets of the company any money requisite.

11. Power to take out in his official name letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot conveniently be done in the name of the company.

In all such cases the money due is deemed, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, to be due to the liquidator himself.

12. Power to appoint an agent to do any business which the liquidator is unable to do himself.

13. Power to do all such other things as may be necessary for winding up the company's affairs and distributing its assets.

NOTES
Derivation

This Part derived from the Companies Act 1985, ss 539(2), 598(2).

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

The Limited Liability Partnerships Act 2000 provides for the creation of Limited Liability Partnerships (LLPs). 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 SSI 2001/128, regs 4, 6, Sch 2.

SCHEDULE 5

Powers of Trustee in Bankruptcy

Part I
Powers Exercisable with Sanction

1. Power to carry on any business of the bankrupt so far as may be necessary for winding it up beneficially and so far as the trustee is able to do so without contravening any requirement imposed by or under any enactment.

2. Power to bring, institute or defend any action or legal proceedings relating to the property comprised in the bankrupt's estate.

[2A. Power to bring legal proceedings under section 339, 340 or 423.]

3. Power to accept as the consideration for the sale of any property comprised in the bankrupt's estate a sum of money payable at a future time subject to such stipulations as to security or otherwise as the creditors' committee or the court thinks fit.

4. Power to mortgage or pledge any part of the property comprised in the bankrupt's estate for the purpose of raising money for the payment of his debts.

5. Power, where any right, option or other power forms part of the bankrupt's estate, to make payments or incur liabilities with a view to obtaining, for the benefit of the creditors, any property which is the subject of the right, option or power.

6. Power to refer to arbitration, or compromise on such terms as may be agreed on, any debts, claims or liabilities subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt.

7. Power to make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors, in respect of bankruptcy debts.

8. Power to make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the bankrupt's estate made or capable of being made on the trustee by any person or by the trustee on any person.

NOTES
Derivation

This Part derived from the Insolvency Act 1985, s 160(2).

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.

Extent

This Schedule does not extend to Scotland.

Amendment

Para 2A: inserted by the Enterprise Act 2002, s 262.

Date in force: 15 September 2003: see SI 2003/2093, art 2(1), Sch 1; for transitional provisions see art 6 thereof.

Part II
General Powers

9. Power to sell any part of the property for the time being comprised in the bankrupt's estate, including the goodwill and book debts of any business.

10. Power to give receipts for any money received by him, being receipts which effectually discharge the person paying the money from all responsibility in respect of its application.

11. Power to prove, rank, claim and draw a dividend in respect of such debts due to the bankrupt as are comprised in his estate.

12. Power to exercise in relation to any property comprised in the bankrupt's estate any powers the capacity to exercise which is vested in him under Parts VIII to XI of this Act.

13. Power to deal with any property comprised in the estate to which the bankrupt is beneficially entitled as tenant in tail in the same manner as the bankrupt might have dealt with it.

NOTES
Derivation

This Part derived from the Insolvency Act 1985, s 160(1).

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.

Extent

This Schedule does not extend to Scotland.

Part III
Ancillary Powers

14. For the purposes of, or in connection with, the exercise of any of his powers under Parts VIII to XI of this Act, the trustee may, by his official name—

(a) hold property of every description,

(b) make contracts,

(c) sue and be sued,

(d) enter into engagements binding on himself and, in respect of the bankrupt's estate, on his successors in office,

(e) employ an agent,

(f) execute any power of attorney, deed or other instrument;

and he may do any other act which is necessary or expedient for the purposes of or in connection with the exercise of those powers.

NOTES
Derivation

This Part derived from the Insolvency Act 1985, s 160(6).

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.

Extent
This Schedule does not extend to Scotland.

ANNEX M

LIST AND COPIES OF EXTRACTS FROM RELEVANT STATUTES

Legislation affected by the proposed Legislative Reform (Insolvency) (Miscellaneous Provisions) 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.

Annex N

Summary of insolvency procedures and relationship between the Act and the Rules

1. The following is provided as an explanation to the insolvency legislation, its recent history, how rules are made and a brief overview of the various insolvency proceedings. It is hoped that it will be helpful in clarifying demystify what many some perceive to be an arcane and complex area of law.

Introduction

1.1. Debt relief can be effected using statutory procedures or by non-statutory means under the law of contract.

Statutory procedures

1.2. Statutory procedures are generally collective in that they bind all creditors; they afford the debtor protection from enforcement action by creditors during the currency of the procedure; they ensure that each creditor is treated equally with creditors in the same class; and they can discharge the debtor from most debts.

Non-statutory procedures

1.3. The principal non-statutory procedure for individuals is the Debt Management Plan This is essentially an ad hoc agreement between a debtor and some or all of his creditors to reschedule debts. It may not discharge the debtor from debts that are not paid in full and does not give the debtor protection from enforcement action during its currency. Such plans are currently unregulated.

Legislation

1.4. The main legislation as regards England Wales and Scotland is contained in the Insolvency Act 1986 and the Insolvency Rules 1986. There are also a number of lesser S.I.s on matters such as the level of fees and the regulation of licensed insolvency practitioners ("IPs"). The Bankruptcy (Scotland) Act applies to Scotland with regard to personal insolvency.

1.5. There is other primary legislation, generally of application to England and Wales only, and of very specific application, which provides for special administration regimes for companies in certain key industries or which applies the Insolvency Act 1986 with modifications to such insolvent associations as friendly societies etc. Other statutory insolvency procedures for individuals are the essentially defunct deed of arrangement under the Deeds of Arrangement Act 1914 and the county court administration order under the County Courts Act 1984. The Tribunals, Courts and Enforcement Act 2007 seeks to revitalise the county court administration order and to make certain other debt relief provisions. However, those provisions are yet to come into force. Also still in use for companies are schemes of arrangement under the Companies Acts.

1.6. Insolvency in Northern Ireland has been wholly devolved since before 1986.

The Insolvency Act 1986

1.7. The Insolvency Act 1986 was the product of the report of the Cork Committee. The committee was set up in 1977 to review the law and practice relating to insolvency, to examine the possibility of harmonising and integrating the existing procedures, to

suggest less formal alternatives to bankruptcy and liquidation and to make recommendations. It reported in 1982.

1.8. It is divided into three Groups of Parts: the First Group of Parts has parts relating to corporate insolvency proceedings; the Second Group of Parts has parts relating to individual insolvency proceedings; the Third Group of Parts relates to miscellaneous matters bearing on both company and individual insolvency. The principal Parts of the Third Group of Parts relate to provision for the creation of a regime for the licensing of private sector insolvency practitioners (IPs) and for their qualification and regulation since some insolvency procedures are conducted in whole or in part by them; public administration relating to Official Receivers who are statutory office holders in certain insolvency procedures; and powers to make subordinate legislation.

1.9. Common to all insolvency proceedings is the aim to provide a means of writing off debt whilst maximising the return to creditors.

1.10. All insolvency procedures are collective, in that all creditors are bound by the process. Receivership in its various forms is not really an insolvency proceeding but rather a method of enforcing a debt for which the creditor has security and is not a collective procedure.

1.11. There is a hierarchy as to who gets paid out of the assets after the costs of the proceeding have been met. This is a complicated area. However, in broad terms, secured creditors take precedence. Again in broad terms, if funds are sufficient, each secured creditor is paid in full from the realisation of the property over which his debt is secured. Where more than one creditor has a debt secured on the same property, they are paid in full in the order in which their security takes precedence for as long as funds allow. Once all secured creditors have been paid in full, the balance is put to paying the "preferred creditors", essentially the claims of employees for redundancy pay etc. and in respect of their pensions. [If there is insufficient, there are other remedies open to them under employment legislation. DN- suggest omitting this as we would have to explain the SoS role] Once the preferred creditors have been paid in full, any balance is put to paying the unsecured creditors. This category would include trade creditors, any consumers and the Government (including HMRC in respect of unpaid taxes). . If there is insufficient, they are paid a dividend pro rata. In a corporate insolvency, if the unsecured creditors have been paid in full and there is still a balance, it goes to the shareholders.

<u>Overview of insolvency proceedings</u>

First Group of Parts: Corporate Insolvency

1.12. **Part 1—Company Voluntary Arrangement** (CVA): This was an innovation in the 1986 Act. A CVA is an agreement between a debtor company and all of its creditors whereby either the company's debts are rescheduled. It usually involves agreement by the creditors to compromise the debt and to receive a pro rata dividend in full and final satisfaction of their debts. Once approved, a CVA is binding on all creditors. The directors remain in control of the company. The aim of the CVA is to rescue the company as a going concern. The implementation of the CVA is overseen by IPs. It is largely contractual in nature. The involvement of the court is limited. A CVA can last a number of years. If the company fails to comply with the terms of the CVA, it may fail and the balance of the debts remains outstanding and enforceable.Liquidation usually ensues. CVAs apply in England and Wales and Scotland.

1.13. **Part 2—Administration:** Administration is a process whereby an administrator is appointed to control and manage the affairs of a company. An administrator is always

an IP. He is appointed either by the court or by the company or by a person holding certain types of security over the company's property. An administrator is an officer of the court. The aim is to rescue the company as a going concern or to getter a better result for creditors or to enforce security for the holder of security over a company's property. The administrator takes control of the company, although the directors may perform acts authorised by the administrator. Administration should last no more than a year. Administration was an innovation in 1986. The Enterprise Act 2002 substantially amended it and enabled the company itself to appoint an administrator without involving the court..

1.14. **Part 3—Receivership:** This is not really an insolvency procedure but it is dealt with in the Insolvency Act 1986 because administrative receivers, a subset of receivers, have to be IPs.. There are a number of types of receivership. Essentially, receivership is a contractual remedy whereby a creditor whose debt is secured on property belonging to the company appoints a receiver to deal with property over which the creditor has security in such a way as to satisfy the debt. The involvement of the court is limited. He is not an officer of the court. The receiver is the agent of the company. The process is not collective. It is usually short lived. The company may survive the receivership. Depending on the type of receivership, the receiver is not necessarily an IP. The most common type of receivership, administrative receivership, has largely been replaced by the Administration procedure introduced by the Enterprise Act. Different types of receiverships apply to England and Wales than to Scotland.

1.15. **Parts 4&5—Winding up (or Liquidation):** there are three ways in which a company can be wound up: compulsorily by the court on application, usually of a creditor where the company is insolvent ("compulsory liquidation" or "winding up by the court"); by resolution of the company where the company is insolvent ("creditors' voluntary liquidation" (CVL)); and by resolution of the company where the company is solvent ("members' voluntary liquidation" (MVL)). All three types of liquidation apply in England and Wales and Scotland.

1.16. All three procedures are usually terminal. If so, the company ceases to trade, its assets are realised by the liquidator and the proceeds paid first to creditors (in order of priority) and thereafter to members (shareholders). When the process is complete, the company is dissolved. The procedure can be long or short lived depending on the complexity of the company's affairs.

1.17. In compulsory liquidation, the liquidator is always initially the Official Receiver, although an IP may be appointed subsequently. The process is under the ultimate control of the court. The liquidator is an officer of the court. The directors cease to function.

1.18. In CVL and MVL the liquidator is always an IP. The role of the court is limited but is in ultimate control.

Second Group of Parts: Individual insolvency

1.19. **Part 7A—Debt Relief Order:** A debt relief order is an order made by the Official Receiver in favour of an indebted individual who has qualifying debts below a prescribed level and whose income and assets out of which to meet his liabilities are below a prescribed level. The effect of the order is to discharge the debtor from the qualifying debts specified in the debt relief order. This is a new procedure which was introduced into the Insolvency Act 1986 by the Tribunals, Courts and Enforcement Act 2007. It came into force on 6 April 2009. The aim of a debt relief order is to provide debt relief to individuals who are excluded from other debt relief measures. This applies to England and Wales only.

1.20. **Part 8—Individual Voluntary Arrangement (IVA):** this is the equivalent of a CVA where the debtor is an individual. The debtor may be an undischarged bankrupt or otherwise insolvent. The implementation of the IVA is always overseen by an IP except for the fast track voluntary arrangement (FTVA), where, because the debtor must be an undischarged bankrupt, it must be administered by the Official Receiver. Once approved, an IVA is binding on all creditors. It is largely contractual in nature. The involvement of the court is limited. An IVA can last a number of years. If the debtor fails to comply with the terms of the IVA, it may fail and the balance of the debts remains outstanding and enforceable. Bankruptcy usually follows. IVAs apply in England and Wales. The IVA was an innovation of the Insolvency Act 1986. The FTVA, which is rare, was an innovation inserted by the Enterprise Act 2002.

1.21. **Part 9—Bankruptcy:** a bankruptcy order is an order of the court made on the application either of a creditor or of the debtor. The Official Receiver is always appointed as the "receiver and manager" of the bankrupt's estate. In that capacity, the Official Receiver acts to preserve the bankrupt's estate until a trustee in bankruptcy is appointed who realises the assets and applies the proceeds to the creditors in order of priority and returns any surplus to the debtor. A trustee in bankruptcy who is not the official receiver must be an IP. A bankrupt usually receives his discharge after one year whereupon he is released from his debts. The administration of the estate may take longer. Bankruptcy applies in England and Wales.

Third Group of Parts

1.22. **Part 13—Insolvency Practitioners and their Qualification:** This was an innovation of the Insolvency Act 1986. It provided that insolvency office holders such as liquidators, trustees, administrators, supervisors of voluntary arrangements, other than the official receiver, must be qualified to act as an IP in insolvency proceedings in England and Wales and Scotland. Acting when not qualified is a criminal offence punishable by a maximum sentence of 2 years imprisonment.

1.23. The aim was to create an insolvency profession by providing that individuals, other than the Official Receiver, holding office in insolvency proceedings should be regulated by a recognised professional body or the Secretary of State; be subject to rigorous requirements as to qualification, training, experience and integrity; and to have in place a bond as security against fraud the insolvent estate. This was to address the perceived inadequacies of the previously unregulated state of affairs.

1.24. **Part 15—Subordinate Legislation:** There is separate provision for rules to be made in respect of both corporate and individual insolvency. They are made by the Lord Chancellor with the consent of the Secretary of State and, where they affect court procedure, the Lord Chief Justice. The rules are made by S.I. under the negative procedure. Rules may be made "for the purpose of giving effect to … [the] Act." Schedules to the Act provide for the sorts of things for which the respective rules may prescribe.

1.25. The Lord Chancellor must consult with the Insolvency Rules Committee (IRC). This is a statutory committee made up of leading members of the judiciary and the legal and accountancy professions who have insolvency expertise. There is no requirement for the Lord Chancellor to act on the report or comments of the IRC although, in practice, rules are made which have received the approval of the IRC.

1.26. In practice, the Secretary of State (i.e. BERR and the Insolvency Service (INSS)) drafts the rules and submit them to IRC on behalf of the Lord Chancellor. There is then dialogue between the IRC and BERR/INSS. Once the IRC is content with the draft, they

indicate this to the Lord Chancellor and the Secretary of State. If the Lord Chancellor is content with the rules as approved by the IRC, he formally obtains the necessary consents from the Secretary of State and, where appropriate, the Lord Chief Justice and lays and makes the Rules.

The relationship between the Insolvency Rules 1986 and the Insolvency Act 1986

1.27. Although itself detailed, the Act generally provides the broad framework of the insolvency procedures and the rules expand upon the provisions of the Act and provide for the practice and procedure for their implementation in fine detail.

1.28. The Rules 1986, made under Part 13 of the Act, are themselves a substantial piece of legislation[(over an inch thick containing approximately 950 rules and 6 schedules)].

1.29. The Rules are divided into three Groups of Parts corresponding to the Groups of Parts in the Act. There is a Part in the Rules corresponding to each insolvency procedure. The Third Group of Parts in the Rules relates to Court Practice and Procedure.