EXPLANATORY MEMORANDUM TO

THE INSOLVENCY (AMENDMENT) RULES 2010

2010 No. 686

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The Insolvency (Amendment) Rules 2010 insert new provisions in, and amend existing provisions within, the Insolvency Rules 1986 (S.I. 1986/1925) ("the 1986 Rules"). These changes will modernise and improve the procedures for the administration of insolvency cases and provide savings which are expected to result in better returns for creditors.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Committee has previously criticised the Department for not having consolidated the 1986 Rules, which (including the Rules now before Parliament) are now the subject of twenty sets of amending Rules. The Department attempted to draft a set of Rules which simultaneously made substantive amendments to the existing Rules and consolidated all the existing Rules into a new comprehensive set of Rules: but the complexity of the process was threatening to delay the much-needed substantive amendments. It was therefore decided to do the job in two stages: the Amendment Rules now before Parliament; and a comprehensive consolidation. The intention is that the consolidation will be completed in the course of 2010 so as to come into force on 6 April 2011.

4. Legislative Context

4.1 This instrument amends the 1986 Rules. The 1986 Rules set out the detailed procedure for the conduct of all company and individual insolvency proceedings in England and Wales under the Insolvency Act 1986.

4.2 These amendments modernise and simplify the procedures in the 1986 Rules to enable insolvency cases to be administered more efficiently and by modern means, with greater control and transparency being given to creditors in some areas. This is expected to bring financial benefits to creditors and will be welcomed by those involved in insolvency processes.

4.3 These amendments sit alongside, and are to an extent dependant upon, changes which have been made to the Insolvency Act 1986 by the

Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 (SI 2010/18) , which also has an implementation date of 6 April 2010. They follow changes made to the regime for advertising and publicising insolvency events on 6th April 2009 by the Legislative Reform (Insolvency) (Advertising Requirements) Order 2009 (SI 2009/864) and the Insolvency (Amendment) Rules 2009 (SI 2009/642).

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales. Additionally, the amendments in paragraphs 111 (Rule 3.1) and 137 (Rule 3.39) of Schedule 1 apply also in Scotland to the extent provided by Rule 0.3(2) of the 1986 Rules.

5.2 The transitional provisions in Schedule 4 give effect to three principles:

- amendments of a purely procedural nature which simplify the way in which cases are handled but do not affect the substance of anyone's rights and obligations apply in all cases from 6 April 2010;

- but amendments which do affect rights and obligations apply only to new cases started on or after 6 April 2010, because it would often be unfair and/or impractical to make changes of that type part way through a case;

- in addition, changes which follow the amendments to the Insolvency Act 1986 made by the Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 have to come into force at the same time and in the same way as the provisions of that Order do.

The second of those principles is given effect by paragraph 1 of Schedule 4. That paragraph specifies the events in different types of insolvency procedure which determine whether a case is a new case to which the changes affecting rights and obligations apply.

The first and third of those principles are given effect by paragraph 2 of Schedule 4. Changes relating to new provisions in the Act, otiose provisions in the Rules, leave of the court, signature on documents, affidavits (which are replaced in insolvency cases by statements of truth and witness statements – see 7.2.5 below), electronic notices and court procedure all come into force on 6 April 2010. Sub-paragraphs (2) to (4) of paragraph 2 ensure that when a case has begun before 6 April 2010 and continues on or after that date, pre-6 April references to affidavits are treated from 6 April as including witness statements, and post-5 April references to witness statements are treated as including pre-6 April affidavits, so that there is a seamless change from one to the other.

Paragraphs 3 to 5 of Schedule 4 deal with a handful of special cases where paragraphs 1 and 2 do not deliver the right result.

Paragraph 6 says that old forms – forms as they are before being amended – should be sent to the registrar of companies only if the event which requires them to be sent happens before 6 April 2010. If the event happens on or after that date, new forms must be used, modified where necessary if the case started before 6 April and therefore not all the amendments apply (see second principle above).

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- ***What is being done and why***

7.1 The changes in this instrument have been prepared following consultation with a wide range of insolvency stakeholders. The main changes are summarised below:

7.1.1 The policy aim is to modernise the 1986 Rules to better meet the needs of users of insolvency law. This is being achieved by amending the 1986 Rules to better reflect modern business practice in the way insolvencies may be administered and by removing unnecessary financial and administrative burdens.

7.1.2 These changes will allow insolvencies to be administered more efficiently thereby taking costs out of the process, savings which are expected to result in better returns for creditors. The changes in this instrument have been prepared following consultation with a wide range of insolvency stakeholders. The main changes are summarised below:

7.1.3 <u>Electronic Communication</u>
These amendments will make it explicit that communications passing between insolvency office-holders and those involved in the insolvency process may be by electronic means, provided there is consent between the sender and the recipient that communication may be effected in that way. They also facilitate the introduction of an electronic working scheme for insolvency applications within the Royal Courts of Justice, the detail of which will be published within a separate Court Practice Direction. There will be no compulsion on creditors and others to communicate or deal by electronic means as a consequence of these amendments.

7.1.4 <u>Authentication</u>
To further facilitate electronic delivery of documents within insolvency procedures, new authentication provisions are provided, to replace the existing requirement that all insolvency documents must be physically signed. Where e-delivery of

insolvency documents is made, with the consent of the recipient, the document will not need to be signed provided that it is authenticated to the satisfaction of the recipient to confirm the identity of the sender.

7.1.5 Flexible Meetings

Changes are being made to allow meetings that are required to be held within insolvency processes to be held other than at a physical venue. It will be a matter for the convenor to decide how attendees may attend the meeting and this might include by some form of telephonic or other electronic means. Over time it is hoped that this greater convenience will make it easier for creditors and others to engage in the insolvency process. Creditors who might wish to continue attending meetings in person will have that right.

7.1.6 Websites

Insolvency office-holders are being provided with the option of publishing documents and reports on a website as an alternative to sending such information to creditors by post or e-mail. This provides scope for significant cost savings, especially in large administrations where there can be thousands of creditors to whom bulky documents may need to be sent. Creditors will have the right to request a hard copy of any document which is published in this way, at no cost to themselves.

7.1.7 Replacing the use of affidavits

The requirement for insolvency documents to be sworn before a solicitor or commissioner for oaths is being replaced with a requirement that such documents be instead verified by less burdensome statements of truth and witness statements in accordance with the Civil Procedure Rules 1998(CPR). This will not remove any protection for creditors etc. because the CPR provides that proceedings for contempt of court may be taken against any person who makes a false statement in a document (including a witness statement) verified by a statement of truth without an honest belief as to its truth.

7.1.8 Remuneration and Reporting

Significant amendments are being made to the bases of remuneration and the mechanism by which administrators, liquidators and trustees in bankruptcy have their remuneration and expenses approved or challenged within the insolvency process. These changes will provide greater transparency to creditors as a result of a requirement to have such details disclosed within regular progress reports (which in liquidation and bankruptcy are new, replacing annual meetings) and will also give creditors greater control through a new right which will enable creditors to request fuller particulars of fees reported to creditors (and members to request such particulars in a solvent winding-up).

7.1.9 Pre-appointment Administration Expenses

For the first time an express legislative mechanism is being introduced to enable administrators and other insolvency practitioners to seek recovery of unpaid pre-appointment costs as an expense of the administration. Such costs will need to have been incurred in advising the company in relation to the decision to put the company into administration and will only be payable if they are approved by the creditors committee, a resolution of creditors, or the court. To ensure creditors are provided with the information they need to form a view as to whether pre-appointment costs should be approved, provision is made for details of that work to be disclosed within the administrator's proposals, including an explanation as to why the pre-appointment work was necessary.

7.1.10 Standard Content for insolvency advertisements

New provisions concerning the content of notices of insolvency events that are advertised in the London Gazette and by other means are being introduced to require certain basic details to be provided in every notice. This more consistent approach will ensure that users, such as credit reference agencies and financial institutions, will always have the information that they need.

7.1.11 Reduction in Court Filings

The current requirement for documents in many insolvency proceedings to be filed with the court will be reduced. Some of these filings have been identified as unnecessary and will be removed altogether whilst in the case of some company filings, the relevant documents will instead be filed with the Registrar of Companies, where they will be more accessible to creditors.

7.1.12 Victims of Violence

Provision is being made to provide greater protection to individual debtors by making it explicit that the court may consider limiting disclosure of their address or whereabouts in circumstances where it is satisfied that such disclosure might reasonably be expected to lead to violence against the debtor or a member of their family. There is evidence to suggest that the absence of such a provision at present and the requirement for a debtor's bankruptcy to be publicised on the insolvency register and by notice in the London Gazette (and possibly by advertisement elsewhere as well) deters vulnerable persons from seeking debt relief through bankruptcy.

7.1.13 Notifications to the Registrar of Companies

Amendments are being made to the 1986 Rules to reflect the fact that the Registrar of Companies will use a power he has within section 1068 of the Companies Act 2006 to impose requirements as to the form, authentication and manner of delivery of documents required or authorised to be delivered to

the Registrar. These requirements will be set out within Registrar Rules.

- ***Consolidation***

7.2 The Insolvency (Amendment) Rules 2010 amend the Insolvency Rules 1986. Work is underway to consolidate the Rules, with a new set of Rules planned to come into force on 6th April 2011.

8. Consultation outcome

8.1 The amendments being made by this instrument have been informed by an extensive consultation exercise the Insolvency Service has undertaken with representatives of the insolvency profession, creditor groups, the voluntary sector and with relevant officials in other government departments, including extensive liaison with those at the Ministry of Justice.

9. Guidance

9.1 The Insolvency Service has provided regular updates on their website as the project has progressed. These have included bulletins about measures being considered and draft versions of the proposed amendments have also been made available for comment and to help users prepare for the impending changes

9.2 Officials at the Insolvency Service have also spoken to various groups of stakeholders over the past couple of years to inform users of insolvency law about the forthcoming changes. They also held their own stakeholder event in October 2009 specifically intended to take key stakeholders through the main changes.

9.3 It is proposed that further guidance to stakeholders will be published prior to the implementation date.

10. Impact

10.1 Although the financial impact on business, charities and voluntary bodies may be limited in economic terms, the benefits that will flow as a result of modernised insolvency processes and the measures to give vulnerable debtors access to debt relief are significant. In some small way the marketplace as a whole will benefit from the better returns to creditors that are expected and the opportunities that will come for creditors to engage more easily within the insolvency processes as remote attendance at creditors meetings becomes possible.

10.2 There will also be a beneficial impact on the public sector, especially as a result of the reduction in documents that are filed at court.

10.3 An Impact Assessment is attached to this memorandum.

10.4 The key impact will be this improvement in returns to creditors, which has been the major 'driver' for these modernisation changes. By introducing changes which will permit the use of modern business practices, such as e-delivery of documents within insolvency proceedings, as well as the removal of unnecessary burdens, such as the use of affidavits and the removal of unnecessary court filings, more modern, flexible, transparent and efficient insolvency processes will be delivered that better meet the needs of users of the legislation and which encourage creditor participation in insolvency proceedings. The related Impact Assessment to this memorandum estimates that those financial savings will amount to £22.4m a year (with a further £7.8m a year resulting from the related LRO).

10.5 The move to facilitate electronic means of communication and delivery of insolvency notices and the opportunity for participants to attend meetings remotely will bring worthwhile environmental benefits.

11. Regulating Small Business

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

11.2 They would also have the benefit, which cannot be expressed in money terms, of choosing whether they wish to receive information electronically and so free themselves, should they wish, of unwanted paperwork.

12 Monitoring & Review

12.1 The success of these modernisation amendments will be the extent to which the amendments deliver more effective, efficient and transparent insolvency rules and whether the resulting cost savings benefit creditors in the way envisaged. The extent to which that is achieved will be formally evaluated.

13. Contact

Neil.Ogilvie at The Insolvency Service Tel: 020 7637 6307 or email: Neil.Ogilvie@insolvency.gsi.gov.uk can answer any queries regarding the modernisation amendments provided within this instrument.

Summary: Intervention & Options

Department /Agency:	Title:	
The Insolvency Service	**Impact Assessment for key policy changes brought about by the project to modernise and consolidate the Insolvency Rules 1986 and other insolvency secondary legislation**	
Stage: Final	**Version:** 1	**Date:** 25 January 2010
Related Publications: Impact assessment for the Legislative Reform (Insolvency)(Miscellaneous Provisions) Order 2010		

Available to view or download at:

http://www.insolvency.gov.uk

Contact for enquiries: Stephen Parcej **Telephone:** 020 7291 6761

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

The Insolvency Rules 1986 were introduced 24 years ago. Since then they have been amended many times. As a result, insolvency and legal practitioners and others have expressed concerns about their complexity. Government intervention is necessary to simplify, modernise and consolidate the Insolvency Rules 1986 and its associated legislations, to better reflect the way insolvency business is conducted in the 21st century. It is also necessary to reduce its complexity and make it easier to interpret and apply.

What are the policy objectives and the intended effects?

- To Modify, simplify and consolidate insolvency secondary legislation
- To reduce the cost of administering insolvencies by making provisions for modernised procedures, thereby increasing the amount of monies available for return to creditors of insolvent estates
- To reduce burdens on users of insolvency legislation, again with a view to increasing the monies that will be available for return to creditors

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

(1) Do nothing – this option would retain the complexity inherent in the legislation and continue to impose unnecessary costs on insolvency practitioners and creditors of insolvent estates.

(2) Simplify, modernise and consolidate the Insolvency Rules and associated secondary legislation. This is the preferred option as it will streamline the insolvency law, thereby providing clearer legislation that is fit for purpose for users of the law in the 21st century.

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

2 years after implementation

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:

Ian Lucas

..... Date: 24/02/2010

Summary: Analysis & Evidence

Policy Option: Modernisation and consolidation	Description: The modernisation and consolidation of the Insolvency Rules 1986 and other insolvency secondary legislation

COSTS

ANNUAL COSTS		Description and scale of **key monetised costs** by 'main affected groups'	
One-off	**Yr**		
£ Minimal			
Average Annual Cost (excluding one-off)			
£ 3.6 million	10	**Total Cost** (PV)	**£ 33.5 million**

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

BENEFITS

ANNUAL BENEFITS		Description and scale of **key monetised benefits** by 'main affected groups'	
One-off	**Yr**		
£ 0			
Average Annual Benefit (excluding one-off)			
£ 26 million	10	**Total Benefit** (PV)	**£ 242 million**

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

Key Assumptions/Sensitivities/Risks

- Projections have been made for the year 2010/2011 based on current data
- Where possible all calculations of costs and benefits are based on published data or projections based thereon
- Assumptions have been made for the % rate of take-up of the Electronic Communications

Price Base Year 2005	Time Period Years 10	**Net Benefit Range** (NPV) **£**	**NET BENEFIT** (NPV Best estimate) **£ 208.5 million**

What is the geographic coverage of the policy/option?			England and Wales for all proposals. Scotland for some proposals.	
On what date will the policy be implemented?			From April 2010	
Which organisation(s) will enforce the policy?			The Insolvency	
What is the total annual cost of enforcement for these			£	
Does enforcement comply with Hampton principles?			Yes	
Will implementation go beyond minimum EU requirements?			No	
What is the value of the proposed offsetting measure per			£ 0	
What is the value of changes in greenhouse gas emissions?			£ 0	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)					(Increase -
Increase of	£ **52m**	Decrease of	£ **24.4m**	**Net Impact**	**£ 24.4m Decrease**

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

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

Introduction

1. These proposals to modernise and consolidate the insolvency secondary legislation are intended to bring insolvency processes up to date, enabling them to be administered more efficiently, thereby reducing the cost. This will be achieved by:-
    - Innovating and introducing modernisation changes into the insolvency processes;
    - Introducing measures to increase transparency and create greater accountability with regard to fees and expenses charged by insolvency office-holders;
    - Removing or reducing unnecessary administrative and financial burdens;
    - Removing obsolete provisions and unnecessary duplication; and
    - Simplifying and improving the content and structure of the Rules and other insolvency statutory instruments.

2. The cost of administering any given insolvency is paid from any residual assets of the failed entity, which are otherwise available for distribution to creditors. Therefore the financial savings that arise as a result of implementing these measures will feed through to creditors (and members in solvent liquidations) by way of increased dividend payments out of the relevant insolvency process.

3. The Rules (and to a lesser extent the other insolvency statutory instruments that fall to be considered within this project) underpin the main insolvency statute, the Insolvency Act 1986("the Act"). This enactment governs the various insolvency processes and deals with issues such as the functions and regulation of insolvency practitioners. Some modernisation is also being undertaken within this project in relation to secondary legislation underpinned by the Company Directors Disqualification Act 1986, an enactment relating to the disqualification of persons from being directors of companies and from otherwise being involved in the management of companies.

<u>Phase 1: Modernisation of the Rules</u>

4. The bulk of the substantive law changes being implemented within this project will be made by way of amendments to the existing Rules and are planned to come into force on 6 April 2010. These amendments have been informed by feedback received to a substantial targeted consultation exercise undertaken with insolvency stakeholders, in particular insolvency practitioners and lawyers and their representative bodies. That consultation was well received with more than 1000 suggestions being made for amendments to individual rules by more than 70 different stakeholders.

5. The amendments that will be implemented are extensive with more than 500 amendments being made to individual insolvency rules and statutory forms (many more if you count those rules to which more than one change is being made). Many of these are technical drafting amendments but quite a number follow the delivery of several key policy themes. For the purposes of this impact assessment it is only those key policy themes that have been assessed as that is where the principal impact will be for users of the law. In some cases it has been possible to quantify the costs/benefits in monetary terms, in others the impact is articulated in a more qualitative way.

6. These modernisation amendments need to be considered alongside those changes that are being made to the Act by means of the Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 ("the LRO"). The LRO has recently been approved by Parliament and makes a number of changes to the Act to coincide with those being made to the Rules as set out in this impact assessment. These changes to the Act will also come into force on the same implementation date of 6 April 2010. A separate Impact Assessment has been published for the changes being made to the Act by the LRO.

Phase 2: Consolidation

7. Since the Rules were introduced in 1986 they have been amended many times as a result of developments in policy and changes which have become necessary for other reasons, including those consequential on other legislation.

8. After the Rules have been modernised in April 2010(phase 1 above) it is proposed that a consolidation of the Rules will be undertaken by the publication of a completely new set of Rules in April 2011. We are not planning any substantive changes to the law at this point and therefore this phase of the project will focus primarily on the delivery of a better organised and restructured set of Rules with the emphasis being upon making the Rules easier to use than those which are currently in force.

9. This consolidation will have an impact upon users of the law but substantive changes to the law will be limited within this phase because it is expected that all necessary changes to the law will have been addressed within the modernisation work in phase 1. The impact on users will arise because the consolidation will involve a restructuring and rewrite of the Rules with rule numbers and placement of provisions moving from where they are currently located within the Rules. There will also be a move away from forms which are used routinely within the insolvency processes being prescribed within the Rules to anything like the extent that they are now (this is discussed in paragraphs 106 to 113 below).

10. These changes mean that those who use the law on a regular basis will need to re-familiarise themselves with the law and any changes relating thereto. However, the burdens this create will be mitigated by the publication of a 'table of destinations' and other guidance to assist users. However, it will also be countered by the benefits that a clearer presentation of the law will bring and it is therefore envisaged that the impact of the consolidation will initially be cost neutral. However, as users become familiar with the new structure they will benefit from the clearer presentation.

11. During this second phase, we are also expecting to modernise and consolidate those smaller instruments which fall within the scope of the project. Those instruments are:-
    - The Insolvent Partnerships Order 1994;
    - The Administration of Insolvent Estates of Deceased Persons Order 1986;
    - The Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987;
    - The Insolvent Companies (Reports on Conduct of Directors) Rules 1996;
    - The Insolvency Regulations 1994.

12. The substantive law changes to these instruments will be limited and in many cases will amount to little more than a re-write of what is there already, although they will be drafted to reflect the modernisation changes which will have been implemented in the Rules. Otherwise the focus will be upon providing a clearer presentation of the detail within those instruments, something which respondees to the consultation have requested specifically for the first two listed.

Summary – Costs and Benefits of Key Changes

13. We have grouped key policy changes arising from this project into the following themes and further background and costs and benefits are set out in further background on the separate sections of this impact assessment at the pages stated.

    a) **Electronic communication and Use of Websites (see pages 12 to 15)**.
    New provisions are being introduced to allow insolvency office-holders and others to communicate electronically within insolvency proceedings and to provide for the use of websites by office-holders as a means of sending or delivering documents to creditors and others. This modernisation initiative is aimed at reducing the costs of administering insolvency cases and allowing quicker and more cost-effective delivery and exchange of information between parties within insolvency proceedings. As a safeguard, consent will be required before sending documents electronically and paper copies of information published via a website must be provided free of charge, on request, to a person entitled to receive that information.

    b) **Attendance at Meetings (see pages 16 to 17)**.
    Meetings that are required to be held within insolvency processes must at present generally be held at a physical venue. This requirement is often unhelpful to creditors who may be based away from the area in which the insolvency proceedings are being administered and makes it difficult for such creditors to fully engage in the process. The changes will enable the insolvency office-holder to allow attendance at meetings by telephonic or other electronic means where he considers that appropriate.

    c) **Remuneration and reporting changes (see pages 18 to 21)**.
    Remuneration of office-holders in liquidation, administration and bankruptcy proceedings is to be made more transparent, and progress reports for creditors will provide details of remuneration charged and expenses incurred, giving them rights to seek further information and challenge the amounts charged (including a new mechanism to enable pre-appointment administration costs to be approved). Different bases of remuneration will be capable of being agreed for different functions to be performed by insolvency office-holders and fixed fees may be set in administration, creditors' voluntary winding up, winding up by the court and bankruptcy. The views of the insolvency profession and others have been taken into account in deciding how best to revise the existing provisions in order to meet the circumstances of particular cases.

    d) **Affidavits (see pages 22 to 24)**.
    Instead of documents in insolvency proceedings being sworn by affidavit, they will in future be verified by a statement of truth, consistent with changes made by the courts in other areas of civil law. Users should benefit from time and cost savings as verification is done without charge, but may result in a small loss of income to solicitors. The evidential value of a document verified by a statement of truth is equivalent to one verified by affidavit, for example, proceedings for contempt of court may be brought under either procedure. Therefore there should be no reduction in regulatory protection under the Civil Procedure Rules against a person making a false statement in a document verified by a statement of truth.

    e) **Reduction in court filings (see pages 25 to 27)**.
    To reduce the number of documents that are filed at court, thereby reducing burdens that are currently imposed upon the courts. Some of these filings have been identified as unnecessary and removed altogether whilst some on the corporate side will instead be filed with the Registrar of Companies, where they will be more accessible to users.

f) **Victims of violence (see page 28)**.
New provisions have been introduced to offer greater statutory protection to individual debtors(and any member of the debtor's family who normally resides with them) who might face the threat of violence as a result of publicity generated in personal insolvency proceedings.

g) **Requirement for standard content for Gazette notices and public advertisements (see pages 29 to 30)**
New provisions concerning the content of the Gazetting and Advertising requirements are to be introduced. The purpose of these changes is to better meet the needs of stakeholders by providing consistent and appropriate information in all future insolvency Gazette notices and advertisements.

h) **Prescribed Forms (see pages 31 to 32)**.
Amendments will be made to the Rules to reflect the fact that the Registrar of Companies will use a power he has within section 1068 of the Companies Act 2006 to impose requirements as to the form, authentication and manner of delivery of documents required or authorised to be delivered to the Registrar. These requirements will be set out within Registrar Rules. Looking ahead to the new consolidated Rules that are planned for April 2011 a change will also be made to move away from the current approach of prescribing insolvency forms within a Schedule to the Rules.

How Projected Savings Are Calculated

14. The method of calculation varies for each of the themes and is explained in the relevant section of this impact assessment for each of the themes. In general, a conservative approach has been adopted in arriving at the unit cost of each process, either as a proportion a total provided in the baseline calculation which may cover many different sub-processes under a given rule, or from data provided by other organisations for example the courts. Using this approach should cover any likely changes in real costs since the baseline was compiled.

COSTS

Familiarisation for users of insolvency law

15. 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.

16. We consider that the costs of familiarisation for individual insolvency practitioners will be manageable for the following reasons:

- Officials at the Insolvency Service have tried to keep the profession (and indeed other stakeholders) appraised of the forthcoming changes and will continue to do so right up until the implementation date. They recently held a stakeholder conference for this purpose and have given numerous presentations to groups of insolvency practitioners and other stakeholders as the project has evolved.

- Officials will publish guidance for the insolvency profession in the form of an article in the Insolvency Service's "Dear IP" newsletter, which is sent to all insolvency practitioners on a roughly quarterly basis, 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;

- Insolvency professionals 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, such as to record those creditors who have consented 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

Creditors of insolvent estates

17. 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 (and members in solvent liquidations) of such estates by way of dividend.

18. 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 (and members). 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.

19. 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. Changes are also being made within the Rules to provide greater transparency for creditors on costs and expenses charged by administrators, liquidators and trustees in bankruptcy. This will give creditors more regular information about fees charged and improved rights to request fuller particulars and to challenge those amounts where they deem them to be excessive. In all cases, where the savings arise from not doing something that has to be done at present there is no reason why costs should increase and therefore not go to increase the pot available for the creditors.

20. 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.

21. 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 of the insolvency case electronically if that would suit their needs.

22. The changes to enable meetings to be held through modern media will, over time, make it easier for creditors to engage in the process. The requirement to attend at a physical venue can be quite a barrier to creditors in view of the time and cost involved, especially if they are based some distance from where the insolvency is being administered. The opportunity to attend meetings remotely will overcome this barrier.

Insolvency practitioners and lawyers

23. 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 have broadly welcomed the proposals as an aid to more streamlined business practice.

24. When the consolidation of the Rules occurs, which is planned for April 2011, insolvency professionals will also benefit from a better structured set of Rules, with all of the amendments that have been made to them over the past 23 years being put back into one statutory instrument. One of the main objectives of those new Rules will be to make them easier to use.

Courts

25. The proposals to reduce unnecessary courts filings such as documents filed at court in respect of individual voluntary arrangements will additionally free up court time and may help to speed up the processing of other insolvency matters passing through the courts.

Options for achieving policy intention

(a) Do nothing

26. In all of the proposals we could maintain the status quo. However, the proposed changes are needed in order to modernise the legislation and to achieve the policy aim of reducing burdens for users of insolvency law and to reduce the cost of administering insolvencies.

(b) Make changes to the Rules (and the Act)

27. Subject to paragraph 28 below, the modernisation measures can be effected by way of amending the Rules. The proposed consolidation of the Rules which follows in April 2011 must also be done by way of a new statutory instrument being laid before Parliament. This is the only way in which these changes can be made in such a way that they will have the desired effect and to deliver the policy outcome.

28. There will also be limited modification to the main insolvency statute, the Insolvency Act 1986. These changes are largely necessary to enable the Rules to be modernised to the extent desired, without which

the modernisation changes possible therein would be much more limited. Those separate changes will be effected by the LRO and will come into effect at the same time as the changes to the Rules that are dealt with in this Impact Assessment (i.e. on 6th April 2010).

(c) Make changes by the issue of guidance to office-holders and other users

29. Although guidance on some aspects would be feasible, for the vast majority of the proposals, compliance with informal guidance would bring users in conflict with statutory requirements and duties. Those few that could be dealt with in this way would have relatively little impact overall.

SUMMARY OF BENEFITS OF MODERNISATION PROJECT: LRO AND RULES

Modernisation Proposal	**LRO Impact Assessment £m**	**Rules Modernisation (as set out in this IA) £m**
Electronic Communication and Websites	0.6	24.4
Attendance at Meetings	0.4	Nil
Annual Meetings/Remuneration and Reporting	5.2	(3.6)
Affidavits	0.1	0.9
Reduction in Court Filing	0.3	0.7
Victims of Violence	Nil	Nil
Sanction	1.2	n/a
Standard Gazette Notices and Adverts	Nil	Nil
Prescribed Insolvency Forms	Nil	Nil
Total	**7.8**	**22.4**

30. In addition to these changes, within an early phase of this same project amendments have been made to deliver a better regime for publicising and advertising insolvencies, changes which are estimated to result in financial savings of some £18m a year. It may therefore be seen that the estimated savings as a result of this package of modernisation reforms will total in the region of around £47m a year.

31. It can be seen from the table above that the largest benefit will accrue form the proposed changes to the way in which information is communicated in insolvency proceedings. The table on page 16 shows the baseline cost for existing procedures at £52 million, and the savings, taking into account the likely consent rate, to be approximately 47%. The saving attributable to the use of websites have already been included in the overall calculation for the LRO provisions and therefore not considered further here. It is worth noting that the assumed consent rate of 47% is a conservative estimate, if compared with that made for similar uptake of e-comms provisions in the Companies Act 2006. The Companies Act 2006 introduces the facilitation of the use of electronic communication between the company and its shareholders; and it assumed 95% take-up for electronic communications, and the take-up for hard-copy in the region of 0.3% to 5%. The CA 2006 Impact Assessment can be found at: http://www.berr.gov.uk/files/file29937.pdf

32. Although the obligation to communicate information about insolvency processes is a real administrative burden, it was not measured in the original exercise to provide a benchmark against which to provide a meaningful comparison. As there is no data within the Admin Burdens Baseline for this particular information obligation this has been addressed within this assessment. As a result the impact upon the baseline will be to increase it by £52m and this measure will then be estimated to reduce it by £24.4m, as shown on the table on page 16.

Electronic Communication and Websites

33. To allow insolvency office-holders and others to communicate electronically within insolvency proceedings and to provide for the use of websites by office-holders as a means of sending or delivering documents to creditors and others.

Background

34. The insolvency legislation pre-dates the widespread use of electronic communication and websites and is built around communication in paper form. The Enterprise Act 2002 amended the primary legislation in relation to administrations to specify that electronic communication may be used in cases where the Act refers to documents or information being "in writing". However, this cast doubt on whether electronic communication was permissible in other forms of insolvency procedures and in the absence of certainty few communications have been sent electronically by insolvency office-holders(even within administrations).

35. This issue was one of several proposals which were the subject of a formal public consultation in September 2007(as part of the related LRO that is linked to these modernisation changes) to seek views as to whether it should be made explicit that electronic communication be permitted, with the consent of the recipient. We also consulted at the same time as to whether information required to be sent by office-holders could be posted on a website. These proposals received strong support and it was clear that there was an appetite for these changes, provided there were adequate safeguards. Some consultees estimated the costs savings would be substantial. Further detail can be found in the Summary of Responses to the Consultation Paper .

36. By way of examples:

- A major law firm said that six months earlier they were receiving a little over 8,000 items of post a week, which had at that time increased to more than 18,000 items per week. They stated that the burden on office-holders and recipients in processing this amount of post was very significant. They believed that if the proposals were adopted as envisaged (together with some standardisation in terms of reporting, which is not in fact being taken forward) their burden could be reduced by at least 50%. They estimated that electronic communication would provide savings to them of £1 million a year;
- The Institute of Chartered Accountants in England and Wales positively endorsed the move to allow electronic means of communicating, saying that it would improve efficiency and reduce burdens on insolvency practitioners and the estate;
- A firm of insolvency practitioners said that on average time and postage savings of £5 per letter would be made;
- The Institute of Credit Management , 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."

37. We are taking this change forward in two ways:

- Amending the Act, by means of the LRO, to make it explicit that if a thing is to be done "in writing" it can be done electronically, with a small number of specific exceptions which will be set out in the Act. Additionally, a change will be made to enable an insolvency office-holder who is required to send documents and reports creditors and members to instead be able to comply with that requirement by posting them on a website; and

- Amending the Rules in a way that will allow electronic communication between consenting parties and the use of websites in all cases.

38. The Rules will expressly provide that unless in a particular case some other form of delivery is explicitly required by the Act, the Rules or Court Order, an insolvency notice or other document can be sent electronically, provided that the intended recipient has consented to this. Creditors will be able to give insolvency practitioners such consent generally so that it applies in all cases administered by that practitioner in respect of which they are a creditor, or specifically for the purposes of a particular case.

39. The new Rules will also allow insolvency office-holders to send insolvency documents via websites. If an insolvency office-holder wishes to communicate by publishing the relevant document on a website, he/she will inform creditors and/or members that a document had been posted to a website, giving them a link and any password required to gain access to the relevant website. The information would then be required to be available on the website for not less than 3 months and any creditor or member would have the right to request a hard copy of any document sent in that way.

40. The new Rules will also explicitly provide for electronic delivery to the Secretary of State, Chief Land Registrar, Registrar of Companies, or an insolvency office-holder of statutory information (as an alternative to completing a prescribed statutory form) provided that that information can be reproduced legibly within the statutory form by the recipient.

Electronic Working in the Courts

Provision is also being made to allow electronic working within the Royal Courts of Justice in London to allow those dealing with the High Court in London to make applications and file documents and other evidence within the relevant proceedings by electronic means. The detail will be set out within a practice direction under the Civil Procedure Rules and over time the scheme may well be extended to other insolvency courts. HM Courts Service have not produced any figures as to the financial benefits that will result from this scheme but the following benefits will be expected to result:-

- **For lawyers**: Lower cost, simplified and faster process of exchanging documents with Courts; the ability to search for and see electronically documentation associated with publicly accessible case files as well as their own cases.
- **For court staff**: Significantly reduced paper work and the removal of mundane administrative tasks; a more "useable" and intuitive interface, and case files accessible by more than one person at a time. Benefits will be seen by the reduction in post handling, the automation of fee payments and the removal of re-keying data from forms into the interCOMM system. High Court jurisdictions will all operate off a single, modern IT platform.

- **For the judiciary:** The electronic-working project will deliver features and benefits that the judiciary have specified and required for many years. These features were clearly detailed by the Judicial Working Group of the Modernising the Civil Courts programme in 2001 and that of the Electronic Filing and Document Management programme in 2008.
- **For HMCS:** Enhanced reputation as a leading international jurisdiction; Simplification of the business process through automation and elimination of re-keying, freeing up staff and judicial resource to focus on other activities; Reduction in end-to-end time associated with processing cases; Reducing paper storage and archiving requirements; Generating additional income by delivering a chargeable electronic access service to those court documents where public access is permitted under the court rules. An integrated IT system will enable HMCS to make the most efficient use of its staff resource and maximise the flexibility that the open plan office environment within the Rolls Building will allow.

Costs and benefits

41. These initiatives are expected to bring about substantial cost savings and will speed up communication within insolvency proceedings, whilst providing safeguards for those creditors and others who wish to continue communicating in a more traditional way.

42. The table below shows calculations for electronic communication based on the Insolvency Service's assumptions of the number of creditors per case and the % of creditors who are likely to consent to receive communication in this way. The number of times creditors are written to in each form of insolvency procedure is based on an examination of the law to establish the number of notices that are required to be sent to the creditors in each form of insolvency procedure and discussions with representative insolvency office-holders to agree which are used most frequently. Savings per notice are based on discussions with representative insolvency office-holders – some insolvency procedures such as administration and voluntary arrangements have higher costs per notice as they are generally longer because of the need to set out details of proposals for dealing with the particular case, as well as that other statutory information that must be sent.

43. The newly permitted method of communication via website is linked with electronic communication more generally but the savings arising from it have been isolated and are already included in the estimated savings for the LRO, as the more appropriate place for them. They are therefore shown as being deducted from the overall estimated savings for electronic communication in order to arrive at the savings set out in this impact assessment.

Costs and benefits - Electronic communication

Insolvency procedure	No of cases	Creditors/Members per case	Times written to	Total communications	Estimated cost per notice £	Total Estimated cost £	% consenting	Total Net Savings £
CVL	13,000	35	8	3,640,000	3	10,920,000	40	4,368,000
CWU	6,500	25	3	487,500	1	487,500	40	195,000
Administration	5,000	60	5	1,500,000	4	6,000,000	40	2,400,000
Ad/receivership	900	35	2	63,000	3	189,000	40	75,600
CVA	600	35	2	42,000	4	168,000	40	67,200
MVL	2,600	60	5	780,000	4	3,120,000	20	624,000
Bankruptcy(Dr)	60,000	15	5	4,500,000	1	4,500,000	60	2,700,000
Bankruptcy (Cr)	10,000	15	5	750,000	1	750,000	60	450,000
DROs	25,000	15	5	1,875,000	1	1,875,000	60	1,125,000
IVAs	50,000	15	8	6,000,000	4	24,000,000	60	14,400,000
Total	**173,300**			**19,637,500**		**52,009,500**		**24,404,800**

Attendance at Meetings

44. We are planning to provide 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

45. 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.

46. 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 or the Rules must be held at a particular venue which creditors must attend either in person or by proxy.

47. The proposed changes being introduced will 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 before 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.

48. In addition to delivering cost savings, this change will make it easier for creditors and members to participate in the insolvency process as the problem of physical remoteness will no longer be a barrier. Attendees will also retain the right to attend in person if they so wish.

49. 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

50. The most frequently-held meetings in insolvency procedures are summoned under provisions contained in the Act and so most of the estimated savings are expected to arise from the changes being made by the LRO. The impact assessment prepared for the LRO includes estimated savings as a result of this change amounting to about £0.4 million per year. However, there are some meetings that are summoned under the Rules and, if these changes are implemented, the person summoning those meetings will be able to take of advantage of this method of holding meetings.

51. Examples of meetings summoned under the Rules, rather than the Act are:

- 2.52 - Meetings of the Committee
- 2.59 - Meeting of creditors to fill a vacancy on Committee
- 4.101B CVL – power to fill a vacancy
- 4.108 – Meeting to receive liquidator's resignation
- 4.142 – Company meeting to receive liquidator's resignation
- 4.54 – General power to call meetings
- 4.57 – Requisitioned meetings

52. The need for such meetings will only arise in a small number of cases, if at all, and therefore no attempt has be made to give an estimated of the financial benefits that will result. Although such savings will be modest, we consider that insolvency office-holders will find the ability to hold even small meetings in more flexible ways, for example, creditors committee meetings which are frequent but involve small numbers of known creditors with whom it will be possible to agree a way of meeting that suits all the parties.

Remuneration and Reporting changes

53. The proposal requires liquidators and trustees (other than the official receiver[1]) to send annual progress reports[2] to creditors (members in a members' voluntary liquidation("MVL")) in order to make the process by which the office-holder is remunerated more transparent to those with an economic interest. In voluntary liquidations, this report will replace the annual meeting that is currently required. Progress reports in all liquidations, administrations and bankruptcies will be required to show the remuneration incurred in each period and the activity to which the charge represents. This will enable creditors (members in an MVL) to better ascertain whether value for money has been obtained for the work that the insolvency practitioner has charged and that, ultimately, the creditors (members in an MVL) bear.

Background

54. In an insolvent liquidation, administration or bankruptcy, a remuneration basis is set by either the liquidation/creditors' committee, the creditors at a meeting or the court[3] and the office-holder uses the basis to calculate his or her remuneration for work carried out on the case. These bodies do not approve the remuneration charge that is arrived at by using the basis but a creditor (with support of, currently, 25% of its fellows) who thinks that the remuneration calculated is excessive, can apply to court that it be reduced.

55. Several changes are being made to how the basis of remuneration is set and how the information on remuneration charged is brought to the creditors' attention. These include:

- An additional basis is being introduced - a fixed fee for the office-holder for all or part of the work necessary on the case;
- the ability to 'mix & match' – to affix one basis to one action and another to a different action - between the three available bases of remuneration will be permitted, to increase flexibility (currently only one basis may be fixed to a case);
- the office-holder will have to report on the remuneration and expenses incurred on an annual (liquidation and bankruptcy) or biannual (administration) basis;
- the remuneration and expenses must be clearly shown in a progress report, which must also draw the creditors' attention to their rights to seek further information on the remuneration and expenses and to challenge those amounts (or the basis itself) at court within 8 weeks of receipt of the report;
- to ensure that adequate information is included in the progress reports, the office-holder must have taken steps to have the remuneration basis (or bases) fixed within 18 months of their appointment;
- creation of a right, in an MVL only, for a member, with the requisite support of 10% its fellows, to challenge the remuneration charged (or expenses incurred) by the liquidator, at court;
- the requisite support required for a creditor to challenge remuneration in a liquidation, administration or bankruptcy to be reduced from 25% to 10% of creditors voting;
- creation of a right for a bankrupt, with an economic interest in the sum, to challenge the remuneration charged (or expenses incurred) by the trustee);
- removal of the opportunity to charge the scale fee in creditors' voluntary liquidations("CVLs"); and
- a new mechanism to enable administrators and insolvency practitioners who have advised the insolvent company with a view to it entering administration to seek to have that work paid as an expense of the administration.

56. The key change here is to make a change to require insolvency practitioners who take office as liquidators and trustees in bankruptcy to send annual progress reports to creditors (members in MVLs) in which they will be required to report, amongst other things, amounts of remunerations and expenses which have been charged in the period covered by the progress report. This will mirror the 6-monthly progress reports which administrators are required to send to creditors. Going forward the detail within progress reports whether they be sent by administrators, liquidators or trustees will be identical in terms of reporting amounts of remuneration and expenses (although the reports will continue to be bi-annually in administrations).

57. In relation to liquidations these progress reports will replace the annual meeting provision at section 93 (members' voluntary liquidation) and section 105 (creditors' voluntary liquidation) Insolvency Act 1986. The requirement to hold these annual meetings are being removed by the LRO and the impact assessment that was laid with that LRO estimates that savings of about £5.2m a year will result.

[1] The official receiver's remuneration is not set by the creditors but comes from the statutory case administration fee that applies in every winding up by the court or bankruptcy case. For this reason, official receivers will not be required to issue a progress report in cases where they are the office-holder

[2] Administrators are already under an obligation to send progress reports to creditors every 6 months following the entering of administration and this obligation will continue.

[3] This last stage is replaced by the application of a scale charge in bankruptcy and, going forward, a winding up by the court

58. Additionally, a new right is being created for creditors which will enable them to ask the office-holder for further information about remuneration they have charged, or expenses incurred. This is broadly similar with an existing right to ask for limited information under regulation 36A Insolvency Regulations 1994 but it is envisaged that the information received under these new provisions will be qualitative, whereas regulation 36A information is wholly quantitative.

59. These changes will increase the control over agreeing remuneration of those with an economic interest in the matter(usually the creditors), by strengthening the control of those parties over the process of setting and calculating remuneration and giving them clearer rights to request better particulars and to challenge amounts they consider to be excessive.

Costs and Benefits

60. Taken in isolation these changes will impose additional costs upon the insolvency process because there will be a new requirement to send annual progress reports to creditors and members in liquidations. However, as indicated above, they should be viewed alongside the removal of annual meetings in liquidations and when they are so, a net benefit will result.

61. However, this impact assessment deals only with the additional burden that will be imposed on the process as a consequence of the greater control and transparency of remuneration that creditors will enjoy after these new rules come into force to require these new progress reports. The table below summarises that burden:-

Insolvency Type	Projections for 2010/11	Estimated Cost of annual report per case (£)	Estimated Annual Cost (£)	Estimated Total Cost over life of case (£)
Members voluntary liquidation	2,600	202	52,250*	105,040**
Creditors' voluntary liquidation	13,000	177	2,301,000	4,602,000**
Bankruptcy	5,825***	117	681,525	1,363,050
Court winding up	1,032***	167	172,344	344, 688****
TOTAL			**3,154,869**	

* 90% of MVLs end within a year and therefore will not require a progress report.
** Research indicates that liquidation last on average 2 – 2.5 years, so 2 progress reports are used to calculate these figures. The report laid before the final meeting pursuant to s94/s106 Insolvency Act 1986 is an existing requirement and is not included in these calculations.
*** Cases in which an office-holder other than the Official Receiver was appointed, taken from a 3-year average, Apr 2006-Mar 2009.
**** Research indicates that liquidation last on average 2 – 2.5 years, so 2 progress reports are used to calculate these figures (final progress disregarded, as liquidators are already required to prepare a report for the final meeting pursuant to s146 IA 86

62. This table excludes administration cases because administrators are already required to report to creditors on the progress of the procedure every 6 months. It is not considered that any additional burden will be conferred upon them as a result of the new remuneration and reporting provisions.

63. The estimated cost of producing annual reports is based upon the following analysis and assumptions and has been informed to some extent(and where available) by the data available with the 2005 Admin Burdens PwC baseline in relation to the obligation which administrators currently have to produce progress reports:-

	Hours spent	Estimated Cost per hour (£)	Time cost (£)	Estimated no. of creditors per case	Overhead cost (£)	Total cost (£)
CVL	7	20.30	142	35	35	**177**
MVL	7	20.30	142	60 (members)	60	**202**
Winding up by the court	7	20.30	142	25	25	**167**
Bankruptcy	5	20.30	102	15	15	**117**

64. It is possible that some of this cost will be offset by office-holders being more circumspect on the remuneration figure calculated by using the most popular basis for calculating remuneration (time spent on a case), given the increased scrutiny to which the quantum arrived at will be subject. However, no attempt has been made to quantify this.

65. The new right creditors (members if MVLs) will have to request better particulars (see paragraph 56 above) will also create an additional burden upon the insolvency process. To limit that burden, it will only be possible for creditors (members in an MVL) to make such a request if 5% of creditors by value request this information, although the court will have discretion to allow a lower percentage if it thinks it just to do so.

66. In practice such requests are made now and office-holders will respond to such requests. It is difficult to say therefore what the additional burden might amount to, although the following estimate has been made:-

Number of cases where further information will be requested	Cost of providing that information per case[4], £	Total burden, £
600	721	**432,600**

67. Taking the estimates calculated within paragraphs 59 and 64 together, it can be seen that this measure is estimated to result in an additional burden on insolvency processes of some of £3.6m a year.

[4] 7 hours work at £100/hour, with £21 external overhead cost

Affidavits

68. The proposal is to remove the requirement for any document in insolvency proceedings to be sworn by affidavit, and to 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.

Background

69. Insolvency legislation at present requires certain documents to be sworn by affidavit. This carries costs with it:

- To the person swearing the document since that person has to pay a fee for the swearing of the affidavit and for any exhibits. The current cost of swearing/affirming is £5 plus £2 per exhibit; and

- Where the document is being prepared in connection with the administration of the insolvency proceedings, the insolvency office-holder or a member of his staff is in practice involved in arranging for the swearing.

70. We propose to remove this obligation by instead requiring such documents to be verified by a statement of truth in accordance with the Civil Procedure Rules 1998. This would remove the financial cost referred to above, would remove much of the administrative inconvenience associated with the existing requirement. It will also bring insolvency legislation into line with most other areas of the civil law which have similarly replaced affidavit requirements.

71. The change proposed would lead to no reduction in regulatory protection. With very few exceptions, the evidential value of a statement verified by a statement of truth under the Civil Procedure Rules equivalent to one verified by an affidavit. 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.

Costs and benefits

72. There are a number of provisions in the Rules which require a document or other evidence to be verified by affidavit, some of these arise in every insolvency others very infrequently. The nineteen included in the summary table below are those mostly frequently encountered and it is only those that have been taken into account for the purposes of calculating the cost/benefit analysis of this change.

73. 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 projected figures for 2010/11, the year in which the amended Rules are scheduled to come into effect, are shown at Annex A.

74. In a few cases, the estimate for the number of the specified event is a relatively small and constant proportion of the number of overall insolvency cases within the Rule. For example, in Rule 5.7 the number of applications for an interim order in connection with a proposal for an Individual Voluntary Arrangement is about 1% or less of all IVAs proposed mainly because the benefit of such an order is most likely to benefit those carrying on a business or who are facing the possibility of a creditor commencing bankruptcy proceedings. The numbers are assessed as being constant and if anything may be a slight understatement.

75. 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. Where a single document is concerned the cost is assessed at £5 only. Any other costs involved in the preparation of the relevant documents concerned will remain.

76. 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 £900,040, as follows:-

	Affidavits replaced by witness statements-Savings				
Current Rule	**Description**	**New Rule**	**No of Cases where affidavit required**	**cost**	**Total**
				£	**£**
2.2	Affidavit in support of administrator's application to court	2.2	1,000	5	5,000
2.9	Affidavit of service of application to court for	2.9	1,000	7	7,000

	administration order				
3.4(2)	Affidavit of concurrence with Statement of Affairs (Administrative Receivership)	3.5	180	5	900
4.34	Affidavit of concurrence with Statement of Affairs (Creditors'' Voluntary Liquidation)	4.27	2,600	5	13,000
4.9	Affidavit of service of winding-up petition	4.75	13,000	7	91,000
4.12	Petition verified by affidavit	4.78	13,000	7	91,000
4.18	Affidavit opposing petition	4.84	500	7	3,500
4.25	Affidavit in support of application for Provisional Liquidator appointment	4.94	50	5	250
4.33	Statement of Affairs (Court winding-up)	4.103	500	7	3,500
5.7	Affidavit in support of application for interim order	5.7	450	7	3,150
5.52	Affidavit in support of application to annul Bankruptcy Order following Voluntary Arrangement	5.52	450	5	2,250
6.32	Affidavit in support of application to withdraw Creditor petition	6.30	500	7	3,500
6.4	Affidavit in support of Application to set aside statutory demand	6.4	500	7	3,500
6.11	Affidavit proving service of statutory demand	6.11	15,000	7	105,000
6.12	Creditor's petition for bankruptcy verified by affidavit	6.12	10,000	7	70,000
6.14	Affidavit that personal service of petition cannot be effected	6.14	1,000	7	7,000
6.15	Affidavit of service of petition	6.15	10,000	7	70,000
6.41	Debtor's petition Statement of Affairs	6.38	60,000	7	420,000
6.206	Affidavit stating grounds for annulment application	6.136	100	5	500
	Total Savings				**900,050**

77. The largest savings are in relation to debtor's petition statement of affairs in bankruptcy which must be sworn under the provisions of rule 6.41 of the Rules. The calculation is based on the projected number of individuals that will petition for bankruptcy in 2010/11 of 60,000 Therefore the total benefits in respect of the provision will amount to £420,000 (60,000x £7).

78. Most of the rules provision require an affidavit to be sworn in all cases, however, for example, under rule 2.2 the obligation to swear an affidavit in support of an administrator's application to the court applies in only about 20% of cases. Therefore the total benefits in respect of the provision will amount to £5,000 (5,000 x £5 x 20%)

79. 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 the changes being made to the Act by the LRO, no comments were received from solicitors, commissioners for oaths or any bodies representing those occupations, including the Law Society, to suggest this is not the case.

Reduction in Court Filing

80. The number of documents that are currently required to be filed at court by insolvency office-holders will be significantly reduced. Some of these filings are now considered to be unnecessary, whilst some on the corporate side will be replaced with a requirement to instead file such documents with the Registrar of Companies, where they will be more accessible to users.

Background

81. Insolvency legislation at present requires various documents and other information to be filed at court under provisions found in both the Act and the Rules. Such documents can take the form of a single page, or may consist of a substantial report. There is no requirement for the court to do anything other than place it on the relevant case file the court is required to maintain for that insolvency, where it may be inspected by those persons having an interest in the insolvency proceedings. In practice very few requests are made to inspect court files and in most cases such requests can as easily be made of the relevant insolvency office-holder directly.

82. These requirements were originally provided for at a time when the courts' role in all aspects of insolvency proceedings was assumed to be more active than it has latterly become. In view of the pressure on court time and resources, this has changed and the court's role in now seen more as that of acting as an arbiter for dispute resolution.

83. In the modern age, the right to a physical inspection of court files might also be regarded as somewhat cumbersome and outdated. Therefore, in relation to corporate insolvencies the public file on the companies register maintained by the Registrar of Companies is considered to be a more suitable repository for many documents. That register can be accessed via the Companies House on-line facility. Indeed, many insolvency documents already need to be filed with the Registrar of Companies.

84. The aim of these proposals is therefore twofold. Firstly, to reduce the burdens on the courts and their users by removing the requirement to file documents entirely where the filing is considered to be unnecessary and/or to serve no valuable purpose. Secondly, in relation to corporate filings, to instead have such documents filed with the Registrar of Companies (although it should be noted that filings at the court will continue as now for many corporate events) where they will be more accessible to users.

Costs and benefits

85. The summary table below sets out the estimated cost savings that will arise as a result of those requirements to file documents in court being removed altogether.

	Reduction in court filings- Savings				
Current Rule	**Description**	**New Rule**	**No of Cases where filing required**	**cost**	**total**
				£	**£**
1.26	Supervisor's accounts and reports	1.26	600	2	1,200
2.29	Verification and filing of statement of affairs in administration.	2.29	1,000	2	2,000
2.47	Report to creditors in administration	2.47	5,000	2	10,000
4.33	Statement of Affairs (Court winding-up)	4.33	6,500	1.5	9,750*
4.42	Further disclosure required following statement of affairs	4.42	650	2	1,300
4.43	Reports by Official Receiver in company winding-up	4.43	6,500	2	13,000
4.50	Notice of meeting of creditors in company winding-up	4.50	650	2	1,300
4.71	Record of meeting of creditors in company winding-up	4.71	650	2	1,300
4.100	Certificate of appointment of liquidator at meeting of creditors in company winding-up	4.100	650	2	1,300
4.153	Formalities of establishment of liquidation committee in company winding-up	4.153	650	2	1,300
4.171	Composition of committee when creditors paid in full in company winding-up	4.171A	0	5	0
4.176	Liquidator's certificate of composition of committee where winding-up follows administration	4.176	500	1.5	750*
4.187	Liquidator's notice of disclaimer	4.187	325	1.5	488*
4.190	Duty of liquidator to keep court informed of recipients of notice of disclaimer	4.190A	325	2	650
5.31	Supervisor's accounts and reports to creditors and the debtor in an individual voluntary arrangement	5.31A	250,000	2	500,000
6.65& 6.70	Requirement for bankrupt to submit accounts to the official receiver	6.65 & 6.70	3,500	2	7,000
6.66 & 6.72	Requirement for bankrupt to make further disclosure to the official receiver	6.66 & 6.70	3,500	2	7,000
6.73	General duty of official receiver to report to creditors on bankruptcy	6.73	70,000	2	140,000
6.79	Notice of first meeting of creditors in bankruptcy	6.79	3,500	2	7,000
6.95	Record of proceedings	6.95	3,500	2	7,000
6.120	Notice of appointment of trustee by creditor's meeting	6.120	3,500	2	7,000
6.122	Notice of appointment of trustee by Secretary of State	6.122	14,000	2	28,000
	Total Savings				**736,350**

* Court filing replaced by new requirement to file at Companies House

86. The estimated savings are calculated by taking the projected number of each relevant insolvency procedure and multiplying this first by the estimated frequency per case of the obligation to file a document under each rule, and then by the estimated cost of the filing process itself. This estimate is derived from the total administrative cost attributable to filing divided by the total number of documents filed. This amounts to £2 in cases where the obligation to file in court will be removed altogether and £1.50 where this is

replaced by an obligation to file with the Registrar of Companies. The reason for this is that the latter can be done electronically and at considerably less cost than is currently possible under the former.

87. The largest savings are in relation to the abstract of receipts and payments that a supervisor of an individual voluntary arrangement is required to file annually (r5.31), an obligation which it is estimated will occur 5 times during the course of an average voluntary arrangement. The calculation is based on the projected number of individuals that will enter into an arrangement in 2010/11 of 50,000 and the total number of events is therefore 250,000. The total benefits in respect of the provision will amount to £500,000 (250,000 x £2).

88. In a few cases, the estimated frequency of the specified event is a relatively small and constant proportion of the number of overall insolvency cases. For example, in rule 6.79 the number of meetings of creditors held to appoint a trustee in bankruptcy is estimated at about 5% of all bankruptcy cases since very few cases have sufficient assets to merit an appointment in this way. In contrast Secretary of State appointments, which do not involve the holding of a meeting of creditors amount to about 20% of all cases.

89. The savings illustrated here are those that will accrue to the insolvent estates of the individuals or companies and from this indirect beneficiaries will be the creditors owed money who should see better returns through the savings made directly by office-holders in carrying out their obligations. In addition there will be savings, not set out here, in administrative resources released to court users that were previously used to deal with the filing requirements prior to the amendments in these proposals. These savings are based on data obtained from HM Court Service and amount to £5 where the obligation to file in court will be removed altogether and £4.50 where this is replaced by an obligation to file with the Registrar of Companies, yielding a total of approximately £1.8m.

90. It is recognised that whilst documents filed on the Companies House register may be more accessible for users, there will be a nominal cost to users who wish to have sight of or download such a document. This cost has been disregarded within the above cost/benefit estimates for two reasons. Firstly, that cost would almost certainly be less than the travel and time cost that would be required under the existing law to attend on the court for the purpose of undertaking a physical inspection of the relevant court's file. Secondly, we have been informed by the Ministry of Justice that requests to inspect each court's file in insolvency proceedings amounts to about one per month and therefore whether it be a cost or benefit, that cost cannot be viewed as a significant issue for assessing the value of this proposal.

Victims of violence

91. Greater statutory protection is to be afforded to any individual debtor (any member of their family who normally resides with them) who might face the threat of violence as a result of their residential address being published following the onset of the insolvency proceedings. This protection will be available to any person who can satisfy the court that such protection is required, by application to the court for an order limiting the normal publication of their residential address.

Background

92. The National Association of Citizens Advice Bureaux (CAB) has made representations to The Insolvency Service about this issue and particularly the effect that advertising in bankruptcies can have on people fleeing domestic violence. CAB advise that domestic violence remains a substantial problem in the UK and the requirement for a bankrupt's name and address to be made public in insolvency proceedings can act as a barrier to people fleeing domestic violence from seeking relief from their indebtedness. CAB state that if someone leaves a violent partner and wants to petition for bankruptcy or is petitioned against by a creditor, they should not be left vulnerable to injury because of information about their current whereabouts being made public in their bankruptcy proceedings.

93. We are therefore introducing a statutory provision into the Rules that will make clear and explicit provision to tackle this issue within insolvency proceedings. We have introduced a special provision within Part 6 of the new Insolvency Rules permitting the court, on the application of the debtor, or insolvency office-holder, to make a number of different orders with a view to ensuring that the information which is normally made available to the public in relation to a bankrupt should not include details of the bankrupt's current address. It is proposed that the court would make such orders where it was satisfied that disclosure of the current address or whereabouts of a debtor might reasonably be expected to lead to violence against the debtor or against a person who resides with him/her as a family member. Additionally, protection will be available to debtors intending to enter individual voluntary arrangements.

Costs and benefits

94. These measures will not necessarily achieve financial reductions in costs or administrative burdens, indeed they could give rise to some additional costs arising from applications made to the court. Nevertheless, we consider it right to make these changes and they will have a non-monetary value to debtors who at present feel unable to make use of debt relief procedures. The changes will relieve some of the social burdens borne by an oppressed minority group of insolvent debtors.

95. No attempt has been made to quantify the costs as there will be few cases in which such applications are made. The change will however have a significant benefit for the vulnerable debtor because it will provide the opportunity for debt relief which, for all practical purposes, is not currently available.

Standard Content for Gazette Notices and Public Advertisements

96. A 'standard contents' provision is to be introduced to ensure that all insolvency notices that are placed in The Gazette include the necessary information that readers may need in respect of the insolvency event concerned. The amending Rules will similarly introduce a standard contents provisions for advertisements that insolvency office-holders may otherwise choose to issue (using a discretion they have to advertise).

Background

97. At present there are some 34 insolvency events in the Rules that require notice to be placed in the Gazette and which may additionally be advertised(or publicised in some other way) at the discretion of the office-holder. Forms are currently prescribed within the Rules for these purposes. As part of the consolidation project, it is proposed that there will be a move away from prescribing forms for each event and instead towards specifying the content but not the form of such notifications. In the case of publication in the Gazette and, where appropriate in further discretionary advertisements, the content will be set out under the different categories of notice as shown below.

98. Feedback received from stakeholders as part of the consultation exercise that the Insolvency Service undertook as part of this project was strongly in favour in the continued use of the Gazette. Notices in the Gazette are seen as serving a useful purpose and are used widely by the business community, banks and HM Revenue & Customs as a source of information about key insolvency events.

99. However, some stakeholders including representatives from the credit reference industry, have requested that all insolvency gazette notices should follow a more consistent format. They have suggested that the formatting of insolvency office-holder appointment notices tend to be more helpful and user friendly than those that concern for example notices about meetings and winding up petitions. A review of the London Gazette reveals stark differences in these different types of notice.

100. Accordingly, a provision will be included within the Rules to prescribe minimum "standard contents" for all gazette notices, as well as for advertisements that are placed elsewhere. Those standard contents will be included in every single notice placed and additional information will be included over and above that according to the nature of the event being publicised. The new Rules will cover the following types of notice:-

- General contents of notices to be gazetted under the Act or Rules;
- Gazette notices relating to companies;
- Gazette notices relating to bankrupts;
- General contents of notices otherwise advertised under the Act or Rules;
- Non-Gazette notices relating to companies; and
- Non-Gazette notices relating to bankrupts.

Costs and benefits

101. As stated above, there are a number of rules in the Insolvency Rules 1986 which require a notice to be sent to the Gazette or advertised otherwise than in the gazette. The following table identifies the most commonly placed notices in the Gazette, with an indication of frequency:-

Insolvency Rule reference	Insolvency Event	Estimated number of notices placed per annum
2.27	Appointment of Administrator	5,000
2.34(1)	Initial creditors meeting	2,500
2.95(3)	Public advertisement of distribution	800
3.2	Administrative Receiver appointed	900
3.9	Meeting of creditors in Administrative Receivership	600
4.21	Making of WUO	6,500
4.50	Public advertisement of first meetings	500
4.106	Appointment of liquidator	10,000
4.182A	Distribution in MVL	2,600
6.34 + 6.46	Making of BO	70,000
6.79	Public advertisement of first meeting	6,800
6.124	Appointment of trustee	10,200

11.2	Public advertisement of intended dividend	10,000

102. The benefits from prescribing the contents of Gazette notices or non-Gazette advertisements in a separate part of the rules can be divided into those accruing to the users of such information contained in the notices and those to the issuers of the notices.

103. For users the benefits will be in the improved consistency of information available. Respondents to the consultation have commented on the need for this and for the Rules to prescribe tailored content depending on the type of notice being issued. The main users of information provided in the are credit reference agencies, Crown departments and financial institutions, and other creditors of company and individual insolvency estates.

104. For issuers of such notices, principally insolvency office holders, the benefits will derive from the ease of reference of the information requirements contained in the new Rules and ease of reference for those who issue the notices.

105. In terms of costs, The Stationary Office have confirmed that even though gazette notices will become longer as a result of these changes, the cost of placing a notice will not increase. There will be some familiarisation costs involved in assimilating the requirements of the changes to issuers and perhaps adapting their systems accordingly but these are not expected to be significant.

Prescribed Insolvency Forms

106. Two changes are proposed in relation to the statutory insolvency forms which are prescribed within schedule 4 to the Rules. Firstly, the modernisation amendments (planned for April 2010) will make a change to the effect that any information and documents that are required to be sent to the Registrar of Companies will no longer be sent on a form prescribed by the Rules but in such manner as the Registrar prescribes within Registrar Rules. Secondly, it is proposed that when the new consolidated Rules are published (planned for April 2011) it is proposed that very many fewer statutory forms will be prescribed within the Rules.

Background

107. Section 1068 of the Companies Act 2006 has introduced a power which enables the Registrar to impose requirements as to the form, authentication and manner of delivery of documents required or authorised to be delivered to the Registrar. This includes issues such as whether the document must be in a standard form, whether it may be sent in hard copy or by electronic means and how it may be delivered.

108. In view of this new power it is no longer appropriate to prescribe these aspects within the Insolvency Rules. Accordingly, amendments are being made within those Rules so that they merely prescribe what information and documents is required to be sent to the Registrar. It will then be a matter for the Registrar to prescribe within Registrar Rules what form, authentication and manner of delivery should be applied to those documents. The Registrar is in the process of amending the Registrar Rules to deal with these insolvency filings and those amendments will have been finalised by the time the amendments to the Rules are implemented on 6 April 2010.

109. Looking beyond this first phase of amendments and at the prescription of insolvency forms more generally (i.e. beyond those which are sent to the Registrar of Companies), when we come to consolidate the Rules (planned for April 2011) it is proposed to move away from prescribing insolvency forms within a schedule to the Rules as is currently the case. There will remain a need to prescribe some forms, but it is anticipated that there will be a vast reduction in the number of forms that are prescribed in this way. This is because the requirement for hard copy signatures on forms does not sit comfortably with provisions that will have been introduced to encourage more widespread use of electronic communication within insolvency processes. It therefore makes more sense to allow a little more flexibility as to the form in which information which is required to be sent may take, including perhaps allowing it to be sent by electronic means as an alternative to within a prescribed form.

Costs and benefits

110. The change that will result in Registrar Rules prescribing form, authentication and manner of delivery of documents to the Registrar is not expected to result in any significant cost to users of the law.

111. Whilst it is acknowledged that users will need to understand that the requirements will be prescribed not by the Insolvency Rules but by Registrar Rules, bearing in mind most users will be professional firms of specialist accountants it is not considered that this will add significantly to the cost of administering insolvencies. What additional burden there is will be mitigated by the Insolvency Service publishing clear guidance to insolvency professionals and other users who may be affected and by the relevant Companies House forms(which is the “form” the Registrar will be prescribing) being accessible via a link from the Insolvency Service’s website.

112. In terms of the longer-term move away from statutorily prescribed forms, this too is not something which would be expected to impose additional burdens on users of the law, (beyond the initial familiarisation with the changes). Such a change will provide a little more flexibility for those providing information from that which currently exists, although in practice it is likely that firms of insolvency practitioners will use forms produced by private sector forms publishers, or it may be that acceptable templates will be made available by the Insolvency Service on its website. Information may not be presented to recipients such as creditors in quite as standard a format as is currently the case but it would not be expected that the differences would be sufficiently different to cause confusion.

113. Although no attempt is being made to quantify it, it may well be that what costs and inconvenience are added as a result of this change will be more than compensated by the benefits which ought to be derived from making a change which will encourage wider use of electronic communication. It will be noted from paragraphs 31 to 41 that anything which can help to accelerate such a move has the potential for bringing significant financial benefits to creditors of insolvency estates.

Scottish Implications

114. Legislative responsibility for Scottish insolvency procedures was divided by the Scotland Act 1998 between the UK Parliament (administrations, company voluntary arrangements and some aspects of liquidation) and the Scottish Parliament (all personal insolvency, receiverships and some aspects of liquidation). In order to ensure that administrations and company voluntary arrangements in Scotland matches their English & Welsh counterparts, the modernisation project has also had to consider changes to the statutory instrument that provides the framework for corporate insolvency in Scotland, the Insolvency (Scotland) Rules 1986 ("the Scottish Rules")[5]. In order to avoid internal inconsistencies within Scottish liquidation (as the UK Parliament can only legislate for those parts of liquidation that are reserved to it), none of the England & Wales changes for liquidation are being extended to Scotland.

115. All proposed legislative changes for England & Wales that affected administrations and company voluntary arrangements were considered for Scotland and, other than where the intrinsic differences between the two jurisdictions meant that a change would be inappropriate, amendments are also proposed for the Scottish Rules. In the main, these amendments are procedural and will little or no impact on business. However, the changes that bring into effect the e-commerce provisions that are enabled by the LRO – use of websites, electronic delivery and electronic meetings – are being extended to Scotland and will have a positive impact on business.

Administration Savings

Electronic communication

Number of cases	Creditors per case	Times written to	Total communications	% consenting	Savings per notice	Total savings
140	60	5	42,000	40%	4	67,200

Websites

Number of cases	% of cases in which a website will be used	No of cases in which a website will be used	Creditors per case	Times written to	No of items posted on website	Savings per communication	Total savings
140	30%	42	60	5	3	3	22,680

Company voluntary arrangements

116. Historically, take-up of company voluntary arrangements in Scotland has been low compared to the rest of Great Britain. Published insolvency statistics show that there have only been 4 such arrangements in the first 3 quarters of 2009, against a total of 4 for the whole of 2008 and 6 for the year before that. Accordingly, any impact to administrative burdens in company voluntary arrangements as a result of these changes will be negligible and are not included here.

[5] The parts of the Insolvency Act 1986 covering Administration and company voluntary arrangements extend to Scotland directly.

Specific Impact Tests

117. **Competition filter and reasoning**

Question	Answer
In the market(s) affected by the new regulation, does any firm have more than 10 per cent market share? See footnote.[6]	Possibly
In the market(s) affected by the new regulation, does any firm have more than 20 per cent market share? See footnote.[7]	No
In the market(s) affected by the new regulation, do the largest three firms together have at least 50 per cent market share? See footnote.[8]	No
Would the costs of the regulation affect some firms substantially more than others? See footnote.[9]	No
Is the regulation likely to affect the market structure, changing the number or size of firms? See footnote[10]	No
Would the regulation lead to higher set-up costs for new or potential firms that existing firms do not have to meet[11]	No
Would the regulation lead to higher ongoing costs for new or potential firms that existing firms do not have to meet?[12]	No
Is the market characterised by rapid technological change?[13]	No
Would the regulation restrict the ability of firms to choose the price, quality, range or location of their products?[14]	No

[6] In terms of "firms" it is possible but unlikely that any one firm would have more that a 10% market share if by market share we mean the number of cases (which must be the sensible approach) rather than the value of the assets they would deal with. The changes would apply regardless of the size of the case. So far as the 10% test is concerned, the best and most recent available data is contained in a report entitled *Report on Insolvency Outcomes* published by Dr Sandra Frisby, Baker and Mackenzie lecturer in Company and Commercial Law, University of Nottingham on 26 June 2006. In that report the author looks at appointment trends by firms in administration. They found that one firm (i.e. not an individual insolvency practitioner) had 9% of appointments and two other firms each had the next largest share of 5% each. So it is possible for one firm to have more than 10% market share. So far as the 10% test is concerned, the best and most recent data we have is contained in a report entitled *Report on Insolvency Outcomes* published by Dr Sandra Frisby, Baker & Mackenzie Lecturer in Company and Commercial Law, University of Nottingham on 26 June 2006. The full report can be seen on The Insolvency Service's website here. On pages 16 and 17 of that report, the author looks at appointment trends by firm in administrations. It was found that one firm (i.e. not an individual insolvency practitioner) had 9% of the appointments and two other firms had each the next largest share of 5% each. So it is possible that one firm might have more than 10% of the market share.

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

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

[9] We think not as the costs of familiarisation would be the same regardless of the size of the firm. There are no costs to firms as creditors. In terms of the training and familiarisation, this would be expected to be the same regardless of the size of the firm. While there might be differences in approach (for example, a small firm may rely on Dear IP and any guidance given by R3 and the Recognised Professional Bodies, while a larger firm may re-work its own internal guidance and/or training) insolvency practitioners will have in place a budget for training, arrangements for Continuing Professional Development, and however they choose to organise this, the costs would not be expected to fall substantially differently on different parts of the insolvency profession.

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

[11] We can see no reason why this should have any bearing on the set-up costs for new IPs

[12] We can see no reason why this should have any bearing on ongoing costs for new or potential firms that existing firms or insolvency practitioners do not have to meet.

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

[14] We can see no reason why the proposed policy changes would restrict the ability of insolvency practitioners or their firms to choose the price, quality, range or location of their products. To the contrary, the proposed changes in Remuneration provisions within the Insolvency Rules, for example, would provide insolvency practitioners with greater flexibility to agreeing their fees and remuneration with creditors in the insolvency proceedings. The new provisions proposed to facilitate e-delivery of insolvency information and documents might assist any insolvency practitioner who was considering a change of location for delivery of their professional services.

118. There are no significant costs for creditors, only potential benefits.

119. 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.

Small Firms Impact Test

120. 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.

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

122. They would also have the benefit, which cannot be expressed in money terms, of choosing whether they wish to receive information electronically and so free themselves if they wish of unwanted paperwork.

Legal aid impact test

123. We only have to carry out this impact test if we are thinking of introducing new criminal sanctions or civil penalties, which is not the case.

Sustainable Development

124. We are aware of the need to make care of the environment an integral part of our policy making. To this end it is intended that the new Rules proposed to facilitate the electronic delivery of insolvency documents and information (in place of paper copies), the possibility of meetings being held through non-physical means and the reduction in filings of paper documents at court could will provide small but positive environmental benefits (see "Other Environment" comment below).

Carbon Assessment

125. Not directly applicable but see comments on the "Other Environment" specific Impact Test.

Other Environment

126. While the implications of these proposals may not be so significant as to warrant a detailed impact assessment for "Sustainable Development" or "Carbon Assessment" the following benefits would flow from these proposals:

- Reduction in use of paper;
- Reduction in levels of unwanted paper; and
- Reduced carbon footprint from fewer documents being delivered physically and over time the reduced need for creditors to travel to meetings at a physical venue.

Health Assessment

127. There are no health implications to these proposals, other than the positive implications of the policy change aimed at offering protection to victims of violence faced with individual insolvency. See comments regarding Human Rights below.

Equality Impact Assessments

128. It is not considered that these amendments to the Rules will have any direct adverse equality impacts. Indeed, the new provisions to assist victims of violence are likely to have an indirect positive impact on women.

129. Further, the proposed amendments to the Rules include new provisions to facilitate the electronic delivery of insolvency documents and the use of websites by insolvency practitioners, and paper-based options will also be available. The increase in possible communication channels will improve accessibility for all, especially for those with disabilities.

Human Rights

130. In producing the proposed policy changes we have been particularly mindful of the need to protect the Human Rights of persons involved in insolvency proceedings. We have consulted with The National Association of Citizens Advice Bureaux (NACB) who is well placed, from their dealings with the public, to provide suggestions for changes to the secondary insolvency legislation to address social, humanitarian and other issues. Our dialogue with NACB has identified a problem with the effect that NACB say this is having on people fleeing domestic violence. NACB have stated that the existing requirement for an individual debtor's name and address to be made public can act as a barrier to people fleeing domestic violence from seeking relief from their indebtedness. NACB go on to describe domestic violence as a substantial problem in the UK with women being at a higher risk of violence after leaving violent partners.

131. This is being addressed by the introduction of new Rules that will make explicit provision enabling the court to limit the publication of the current whereabouts of a debtor subject to bankruptcy or an individual voluntary arrangement. These proposals have been welcomed by NACB.

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

Rural Proofing

133. There could be a marginal impact for creditors, debtors and company directors in rural areas and we think this will be positive.

134. Such persons currently have to send and receive formal communications with insolvency office-holders on paper and usually by post. The proposed changes to facilitate e-delivery of information and documents should assist communication with persons located in rural areas.

Specific Impact Tests: Checklist

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

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

Type of testing undertaken	*Results in Evidence Base?*	*Results annexed?*
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No