



The Insolvency
Service

The Insolvency Service

External Affairs - Policy Unit
4th Floor
4 Abbey Orchard St
London
SW1P 2HT

Tel: 020 7637 1110

DX address: **DX 120875**
DX exchange: **Victoria 18**

Direct line: 0207 291 6744
e-mail: Dean.beale@insolvency.gsi.gov.uk
Date: 23 January 2014

Dear Stakeholder

Clause 10 - Deregulation Bill - partial authorisation of insolvency practitioners

I am writing to draw your attention to Clause 10 of the Deregulation Bill published today. This Bill has previously been the subject of pre-legislative scrutiny.

The provision will permit the recognised professional bodies ('RPBs') that regulate insolvency practitioners ('IPs') to be able to authorise IPs to specialise in either corporate or personal insolvency procedures. This measure extends across Great Britain; in Northern Ireland, IP regulation is a matter for the Northern Ireland Executive.

Such a partial authorisation will allow an IP to take appointments in any insolvency procedure that related to their chosen field of specialism. This would mean that a corporate-specialist IP could be a liquidator, administrator, administrative receiver (receiver in Scotland) and nominee and/or supervisor of a company voluntary arrangement. But they would not be able to, for example, act as a bankruptcy trustee.

It will continue to be possible for IPs to act in both areas and existing IPs will not need to change their type of authorisation (unless they choose to).

This change will –

- reduce the barriers to entry to the IP market and thereby increase competition.
- give rise to savings on training fees, which are likely to be of proportionally greater benefit to smaller firms of insolvency practitioners, including new entrants to the market



- remove a burden from existing IPs who already choose to specialise in a particular area but are required to study areas that have little or no relevance to their work or benefit to their clients.

Consultation

We wrote to a range of interested parties on a number of insolvency measures, including specialised authorisation, in March 2010. This was followed by a stakeholder meeting in April 2010 where the measures were discussed and where this proposal was generally welcomed.

A draft of the Deregulation Bill was subject to pre-legislative scrutiny last year, with the content on specialised authorisation then at clause 9. A number of parties submitted evidence to the Joint Committee of the House of Commons and the House of Lords on the draft Bill.

The Joint Committee published its report into the Bill on 19 December. Among other things, it recommended that Government undertake further consultation on the specialised authorisation of IPs. We have since arranged meetings with various parties who expressed views on this measure during pre-legislative scrutiny. The clause has been amended to reflect concerns about how it would apply in the case of Scottish partnerships (see below).

The Government is committed to listening to the views of interested stakeholders on its policies and I am therefore writing to you to invite any further views on the measure. I look forward to receiving your comments, which should be emailed to policy.unit@insolvency.gsi.gov.uk or sent to the address above by 21 February 2014. Ministers will then be able to consider any views and consider whether any additional changes should be made to the Bill's provisions during its passage.

Change from the draft Bill

One substantive amendment has already been made to the specialised authorisation provision in the Bill as a result of comments received during pre-legislative scrutiny. The draft stated that, to take an appointment in a partnership insolvency, the IP would need to be fully authorised (i.e. the same level of authorisation as now). It was submitted to the Joint Committee that, in Scotland, the estates of partnerships (other than limited liability partnerships) are subject to sequestration - a personal insolvency procedure - under s6 Bankruptcy (Scotland) Act 1985. This differs from the position in England and Wales, where partnerships may be subject to liquidation (a corporate insolvency procedure), while bankruptcy proceedings may be issued concurrently against a partnership's members (all being jointly and severally liable for partnership debts).

Section 388 Insolvency Act 1986 already provides that acting as an IP in relation to an individual also means acting in relation to any of the bodies listed in s6 Bankruptcy (Scotland) Act 1985. Because of this existing provision, the version of the Bill subject to pre-legislative scrutiny did allow for an individual-specialist IP to act in respect of a Scottish partnership. However, it did prevent that IP acting in respect of an individual who was also a member of Scottish partnership with outstanding liabilities, which was not consistent.

Accordingly, as a Scottish partnership's insolvency would be dealt with under personal insolvency law, the Bill has been amended to provide that an IP with a partial authorisation in respect of individual insolvency could take an appointment over an individual who was a member of a Scottish partnership (or any other insolvency appointment made under s6 Bankruptcy (Scotland) Act 1985).

Further measure

The Deregulation Bill makes a further consequential change to the IP regulation framework, in paragraphs 17 – 19 of Schedule 5 Part 6 of the Bill. The Joint Committee made no comment regarding consultation on the content of these paragraphs but, as we are consulting again on clause 10 (which is in a related area), we thought it worthwhile to bring them to stakeholders' attention.

This provision repeals s389(1A) and s389A Insolvency Act 1986, which state that individuals can be authorised to act solely as nominees and/or supervisors of voluntary arrangements (i.e. they could not take any other type of insolvency office).

This measure was also included within the March 2010 consultation mentioned above. While the existing provision at s389A Insolvency Act 1986 has never been used (as it is thought defective), the Government's approach in this Bill is to repeal it (rather than amend it). With clause 10 permitting specialised authorisation in the future, we think do not think that there will be a call for an ability to solely be authorised for voluntary arrangements and so it is therefore no longer required.

The Bill also contains some other insolvency measures in Schedule 5.

Explanatory notes on the provisions are available at

<http://www.publications.parliament.uk/pa/bills/cbill/2013-2014/0162/en/14162en.htm> and the Bill is available at

<http://www.publications.parliament.uk/pa/bills/cbill/2013-2014/0162/14162.pdf>

Yours faithfully

A handwritten signature in black ink, appearing to read 'D Beale', is centered on a light grey rectangular background.

Dean Beale
Head of Policy