Department for the Economy
An Roinn Geilleagair
www.economy-ni.gov.uk

Consultation

Proposals to Amend the Insolvency (Northern Ireland) Order 1989, the Company Directors Disqualification (Northern Ireland) Order 2002 and the Insolvent Partnerships Order (Northern Ireland) 1995

Consultation on Policy

6 November 2024

Closing Date for Responses: **1 January 2025**

Contents

Purpose of this Consultation

The Insolvency (NI) Order 1989

1. The main Northern Ireland primary legislation dealing with corporate and individual insolvencies is the Insolvency (Northern Ireland) Order 1989 ("the 1989 Order"). The 1989 Order corresponds to the Insolvency Act 1986 applying in England and Wales.

2. Various amendments, both major and minor, have been made to the Insolvency Act 1986, over the last few years by the following Acts,

   - The Enterprise and Regulatory Reform Act 2013.
   - The Deregulation Act 2015.
   - The Small Business, Enterprise and Employment Act 2015.

The Company Directors Disqualification (NI) Order 2002

3. The Company Directors Disqualification (Northern Ireland) Order 2002 ("the 2002 Order") makes provision for disqualifying persons from acting as company directors or being concerned in the management of a company on various grounds, including unfitness. The 2002 Order corresponds to the Company Directors Disqualification Act 1986 applying in England and Wales.

4. Amendments to the Company Directors Disqualification Act 1986 have been made provisions within

   - The Deregulation Act 2015.
   - The Small Business, Enterprise and Employment Act 2015.

The Insolvent Partnerships Order (Northern Ireland) 1995

5. The Insolvent Partnerships Order (Northern Ireland) 1995 ("the 1995 Order"), which is a piece of subordinate legislation, provides a statutory framework for dealing with the insolvency of partnerships and members of partnerships and corresponds to the Insolvent Partnerships Order 1994 applying in England and Wales.

6. The 1995 Order needs to be amended and updated to take account of changes made to the Insolvent Partnerships Order 1994.

Proposed Assembly Bill to replicate amendments to GB legislation

7. Historically the Department's policy has been to keep legislation relating to insolvency and director disqualification in line with that applying in England and Wales. This ensures parity of treatment under the law in the two jurisdictions. It also makes matters easier and more straightforward in insolvency proceedings which overlap the two jurisdictions.

8. In some cases, corresponding amendments have already been made to the corresponding Northern Ireland legislation, however, a considerable body of amendments remains to be made to the 1989 and 2002 Orders and the 1995 Order needs to be updated.

9. Accordingly, we plan to introduce a Bill in the Northern Ireland Assembly to make the necessary amendments to all three Orders. The purpose of this consultation is to give you an opportunity to comment on the amendments.

10. This consultation is relevant to:

- insolvency practitioners and their professional bodies,
- the legal profession,
- trade bodies, and
- creditors and their representatives.

11. We are willing to meet, during the consultation period, with respondents who wish to discuss the consultation proposals.

Executive Summary

12. A total of 26 changes are proposed to primary legislation, 24 of which involve amendments to insolvency legislation and two of which involve amendments to legislation dealing with company director disqualification. It is also proposed to include three amendments to a piece of subordinate legislation, the Insolvent Partnerships Order (Northern Ireland) 1995.

13. The proposals to amend primary legislation dealing with insolvency are wide-ranging and in the majority of cases will be of concern mainly to specialist practitioners in the field of insolvency. They correspond to changes which have been made to insolvency legislation applying in England and Wales, most of which were directed at eliminating insolvency procedures which have become obsolete and streamlining the rest where possible.

14. An outline of the proposed changes is as follows,

Proposed Amendments To The Insolvency (Northern Ireland) Order 1989 Drawn From The Enterprise And Regulatory Reform Act 2013

1. Give the Department power to legislate to strengthen existing provision intended to ensure continuity of supply of essential goods and services to businesses which are being kept open by insolvency practitioners in an attempt to bring about their rescue.
2. Give the Department power to legislate to ensure that termination clauses in contracts do not prevent essential supplies being made to businesses being kept open in the case of voluntary arrangements and administrations.
3. Replace reference in the 1989 Order to being adjudged bankrupt under the Insolvency Act 1986.

Proposed Amendments To The Insolvency (Northern Ireland) Order 1989 Drawn From The Deregulation Act 2015

4. Prevent the presentation of a winding up petition being used as a tactic to stymie the appointment of an administrator.
5. Ensure that notice of intention to appoint an administrator no longer has to be given to prescribed persons in cases where they can have no say over the appointment.
6. Allow administrators to obtain their release without the need for a formal resolution from all creditors in cases where there will be no distribution to unsecured creditors.
7. Repeal provision allowing the High Court to order money due to a company it has wound up to be paid into a bank appointed by the Court instead of directly to the liquidator.
8. Provide a mechanism for the liquidator to be released if a winding up order is rescinded.

9. Make it possible for insolvency practitioners as well as the Official Receiver to be appointed as interim receiver.
10. Change the requirement for persons made bankrupt on a creditor's petition to provide a statement of affairs so that they will only have to do so if the Official Receiver requests it.

Proposed Amendment To The Company Directors Disqualification (Northern Ireland) Order 2002 Drawn From The Deregulation Act 2015

11. Enable the Department to obtain information directly from directors of insolvent companies.

Proposed Amendments To The Insolvency (Northern Ireland) Order 1989 Drawn From The Small Business, Enterprise And Employment Act 2015

12. Enable administrators to take action against directors for fraudulent or wrongful trading.
13. Give liquidators and administrators the right to sell or assign causes of action.
14. Ensure that the proceeds of claims brought by administrators or liquidators go to ordinary unsecured creditors, not floating charge holders.
15. Remove the need for trustees and liquidators to obtain sanction from creditors, or, more usually, the Department, to undertake certain actions.
16. Provide for decisions to be taken without a physical meeting.
17. Do away with the requirement to hold final meetings in liquidations and bankruptcies.
18. Enable creditors to opt out of receiving communications about insolvencies.
19. Increase the period by which an administrator's appointment can be extended with the consent of the creditors.
20. Allow administrators to make payments to unsecured creditors out of the "prescribed part" without needing permission from the Court.
21. Allow creditors owed debts under a prescribed amount to be paid a dividend without having to submit a claim.
22. Provide for the Official Receiver to become trustee immediately on the making of a Bankruptcy Order without having to go through a period as receiver and manager.
23. Abolish fast-track voluntary arrangements.

Other Amendments To The Insolvency (Northern Ireland) Order 1989

24. Insert a requirement to notify the Enforcement of Judgments Office if a resolution for the voluntary winding up of a company is being proposed or passed.
25. Correct an error in Article 239 of the 1989 Order which makes having the right to present a bankruptcy petition in the Northern Ireland High Court conditional on the debtor being resident, or carrying on business, in Northern Ireland.

Proposed Amendment ToThe Company Directors Disqualification (Northern Ireland) Order 2002 Drawn From the Enterprise And Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy); and the Small Business, Enterprise And Employment Act 2015 (Consequential Amendments) Regulations 2016

26. Replace reference in the 2002 Order to being adjudged bankrupt under the Insolvency Act 1986.

Proposed Amendments To The Insolvent Partnerships Order (Northern Ireland) 1995 To Reflect Changes Made To The Corresponding Order Applying In England And Wales

27. It is proposed to amend the Insolvent Partnerships Order (Northern Ireland) 1995 to update it,

    - in line with changes made to the Insolvent Partnerships Order 1994 applying in England and Wales by various pieces of amending legislation, including,
        - The Deregulation Act 2015 and Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) (Savings) Regulations 2017 (S.I. 2017 No. 540), and
        - The Insolvency (Miscellaneous Amendments Regulations 2017 (S.I. 2017 No. 1119)

        and,
    - to take account of the repeal of provisions in Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings, as it forms part of retained EU law, by Part 1 of the Schedule to the Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146).

28. It is proposed that there should be an amendment to provide for the Company Director Disqualification (Northern Ireland) Order 2002 to apply in cases where a partnership has entered administration as well as in cases where a partnership is being wound up.

29. It is proposed to revoke provisions in the order which relate to breach of competition law and are therefore outside the scope of the order.

How to Respond

Responses are invited to the proposals set out in this consultation document and/or on the accompanying draft Regulatory Impact Assessment, Data Protection Impact Assessment, Equality Screening Form and Rural Needs Impact Assessment.

All responses should include the name and postal address of the respondent.

When responding please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents.

An acknowledgement will be sent to confirm receipt of each response.

All responses should be sent by email or by letter to:
Email: Jack.reid@economy-ni.gov.uk

Postal Address:
Legislation Unit
Insolvency Service
Department for the Economy
Adelaide House
39 - 49 Adelaide Street
BELFAST
BT2 8FD

If you have any questions about the consultation document you can contact Jack Reid:
Tel: (028) 9054 8543
E-mail: jack.reid@economy-ni.gov.uk

A copy of the Consultation Principles 2018 is included as part of the consultation package.

Alternative format and additional copies

This consultation document is being produced primarily in electronic form and may be accessed on the "Consultations" page on the Department's website at:

Proposals to Amend the Insolvency (Northern Ireland) Order 1989, the Company Directors Disqualification (Northern Ireland) Order 2002 and the Insolvent Partnerships Order (Northern Ireland) 1995 | Department for the Economy

Please contact us if you require this document in hard copy, or in an alternative format, e.g. large print, Braille, disc, audio cassette, or in a minority ethnic language. You may make copies of this document without permission.

Timetable for Responses

This consultation will close on 1 January 2025 and responses to this consultation should be forwarded to reach the Department at the address above on or before that date. It will not be possible to consider responses received after 1 January 2025.

Privacy, Confidentiality and Access to Consultation Responses

We will summarise all responses received and place this summary on the Department for the Economy website. This will include a list of the organisations that responded but will not include individuals' names, addresses or other contact details.

Your response, and all other responses to this consultation, including personal information, may be subject to publication or disclosure on request under access to information legislation (primarily the Data Protection Act 2018/the General Data Protection Regulation 2018; the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR).

For this reason, you should identify any information in your response which you do not wish to be disclosed and explain why this is the case, so that this may be considered if the Department should receive a request for the information under the FOIA or EIR. Please note that an automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

If we receive a request for disclosure of this information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances.

For more information about how we process your personal data, please see our Privacy Notice included as part of the consultation package.

Consultation Process

This consultation has been carried out in accordance with the UK Government's Consultation Principles 2018.

If you have any complaints about the consultation process (as opposed to comments about the issues which are the subject of the consultation) please address them to the insolvency Service's Complaints Officer, Tina Diamond, at tina.diamond@economy-ni.gov.uk.

Impact Assessments

The Department conducted an Equality Screening and Regulatory, Rural and Data Protection Impact assessments for this policy proposal. Copies of these are included as part of the consultation package.

The Equality Screening indicated that any impact on the Section 75 groups will be minor and beneficial. The Regulatory Impact Assessment showed a net benefit for the proposals in the region of £3.25 million. The Rural Impact Assessment indicated that the impact on those living in rural areas will not be any different from the impact on those living in urban areas, with the exception that a proposal to require creditors' meetings to take place virtually can be expected to benefit those living in rural areas. The processing of data by the Department in connection with the use by creditors of virtual means to appoint insolvency practitioners to act as liquidators and trustees was considered in the Data Protection Impact Assessment. It was concluded that the measures which would be taken to ensure the security of the data would result in any risk being very low.

However, if any potential issues are raised as part of this consultation process we will review our impact assessments at that stage and amend them if required.

Our initial regulatory impact assessment will be reviewed at legislation drafting stage where we can assess in more detail the regulatory impact of the policy proposal.

The Equality screening and Regulatory, Rural and Data Protection Impact Assessment documents can be viewed at:

Proposals to Amend the Insolvency (Northern Ireland) Order 1989, the Company Directors Disqualification (Northern Ireland) Order 2002 and the Insolvent Partnerships Order (Northern Ireland) 1995 | Department for the Economy

Introduction

1. This consultation paper sets out in detail proposals for a diverse range of amendments to legislation relating to insolvency and company director disqualification in Northern Ireland.

2. Legislation relating to these two matters in Northern Ireland has always been kept in parity with that applying in England and Wales. This ensures similar treatment under the law in the two jurisdictions. It also makes insolvency proceedings easier and more straightforward for practitioners who operate in both Great Britain and Northern Ireland and where there are creditors and debtors residing in both jurisdictions.

3. During the last decade Parliament at Westminster has been pursuing a policy of legislating to reform and modernise existing legislation, reduce red tape and reduce regulatory burdens. Provision to achieve these objectives in the case of insolvency legislation has been included in three Westminster Acts:-

   - The Enterprise and Regulatory Reform Act 2013,
   - The Deregulation Act 2015, and
   - The Small Business, Enterprise and Employment Act 2015.

4. The latter two Acts also include amendments to the Company Directors Disqualification Act 1986 applying in England and Wales.

5. In some cases, it was possible to include corresponding amendments to Northern Ireland insolvency legislation in the Insolvency (Amendment) Act (Northern Ireland) 2016. Amendments to the Company Directors Disqualification (Northern Ireland) Order 2002 ("the 2002 Order"), corresponding to those made to the Company Directors Disqualification Act 1986, were included in the Small Business, Enterprise and Employment Act 2015 under a legislative consent motion. However, there are amendments corresponding to ones in all three Westminster Acts which still need to be made. An Assembly Act is required to do this.

6. The outstanding amendments do not relate to a single theme but, instead, address a range of matters. Some are significant, others are of a comparatively minor or technical nature. Significant amendments include provisions:-

   - removing the requirement to use physical meetings, other than in certain limited circumstances, as a means of complying with requirements in legislation to let creditors take decisions;
   - aimed at ensuring that essential supplies to businesses are maintained while rescue procedures are underway;

- that do away with the requirement for liquidators and trustees to seek sanction from creditors or the Department before taking certain actions, and
- that allow the Department and Official Receiver to seek information about a person's conduct as a director of an insolvent company directly from any person capable of providing it, including the director themselves, without having to go through the insolvency office-holder.

7. The amendments will affect mainly companies and individuals, who become subject to insolvency proceedings, creditors and insolvency practitioners. Suppliers of utilities and IT Services could potentially be affected by the amendments aimed at ensuring continuity of supply where a business is allowed to continue trading after entering insolvency proceedings.

8. The Insolvent Partnerships Order (Northern Ireland) 1995 ("the 1995 Order") enables similar procedures to be used to deal with insolvent partnerships and their members as are used to deal with the insolvency of companies and individuals who are not members of partnerships. Modified versions of provisions in the Insolvency (Northern Ireland) Order 1989 ("the 1989 Order") and the Company Directors Disqualification (Northern Ireland) Order 2002 to apply in the case of partnerships are contained in schedules to the 1995 Order.

9. As extensive amendments to the 2002 Order have already been made (by the Small Business, Enterprise and Employment Act 2015) and the planned Bill will make changes to provisions in the 1989 Order, amendments are, therefore, going to be needed to some of the modified provisions in the schedules to the 1995 Order.

10. The amendments will ensure that, where partnership creditors are required to take decisions, they will normally do so in ways which do not involve having to attend a physical meeting.

11. The amendments to the modified 2002 Order provisions include:-

- extending the range of matters to be taken into account when determining whether a partner should be disqualified (from being concerned in the management of a company),
- extending the period allowed for bringing an application to have a partner disqualified from two to three years, and
- including provision to enable compensation orders to be sought in cases where a partner has been disqualified and his or her conduct has caused loss to creditors.

12. Other amendments are needed as a consequence of the repeal by Part 1 of the Schedule to the Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146) of certain provisions in Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015, insofar as it forms part of retained EU law,

13. It is also intended to close a gap in the current provision by making it possible for partners to be disqualified where a partnership has entered administration or is being wound up otherwise than as an unregistered company, as well as where it has been wound up by the High Court.

14. Where this consultation deals with replication for Northern Ireland of specific provisions in Westminster Acts, the proposed amendments are set out by reference to those provisions and what they do.

15. This consultation is to give you an opportunity to put forward any views you may have on the proposed amendments.

The Proposed Amendments

PROPOSED AMENDMENTS TO THE INSOLVENCY (NORTHERN IRELAND) ORDER 1989 DRAWN FROM THE ENTERPRISE AND REGULATORY REFORM ACT 2013

Proposed amendment 1

Extension to coverage of existing provision regulating continuance of essential supplies to insolvent businesses (section 92 of the Enterprise and Regulatory Reform Act 2013 and the Insolvency (Protection of Essential Supplies) Order 2015 (S.I. 2015 No. 989))

Existing legislative provision

1.1 One of the key factors in undertaking a business rescue is the willingness of certain suppliers to provide their services during formal insolvency. Utilities and IT goods or services are critical to a business's day-to-day functioning and businesses cannot continue to operate without them.

1.2 Articles 197 and 343 of the 1989 Order effectively treat insolvency office-holders, carrying on businesses belonging to individuals or companies subject to insolvency proceedings, as new customers with a statutory right to receive certain supplies irrespective of any pre-existing debts. Articles 197(2) and (3) and 343(2) to (4) prevent utility suppliers demanding payment of outstanding charges as a condition of continuing supply but allow them to make it a condition for providing the supply that the office-holder personally guarantees to pay for it. Articles 197 and 343 do not, of themselves, provide for enforced continuity of utility services but rather seek to ensure that suppliers of such services are not placed in a preferential position by being able to demand payment of outstanding charges as a condition for continuing supply. At the time the Articles were enacted there were obligations to supply in utilities legislation.

1.3 Deregulation of the utilities sector has resulted in both Articles 197 and 343 needing to be updated, to ensure that they continue to provide effectively for the continuity of utility supplies, especially where the supply is through a type of intermediate provider, known as an "on-seller". Supplies made by this type of supplier can be crucial to the continuity of an insolvent business. For example, retail businesses often rely on a number of different IT and telecoms service providers to run store and till equipment and to accept credit card payments. Similarly, landlords who charge tenants for the supply of electricity or other services are "on-sellers" not direct suppliers.

1.4 The fact that IT supplies have become as indispensable to the survival of most modern businesses as utility services has resulted in it becoming essential to extend both Articles 197 and 343 to cover IT services.

The proposed amendments

1.5 Article 197 deals with continuity of utility supplies to companies which have entered any of a range of insolvency proceedings. Article 197 has been amended by section 16 of the Corporate Insolvency and Governance Act 2020, which was made at Westminster, so that it apples in the case of certain on-sellers and covers the supply of communications services and IT goods and services.

1.6 Article 343 deals with continuity of utility supplies to businesses carried on by individuals who have been made bankrupt or who have entered a voluntary arrangement. It is proposed to update Article 343 in the same way as Article 197 has been updated by making similar amendments to it.

1.7 It is also proposed to give the Department for the Economy ("the Department") power to amend Articles 197 and 343 by regulations to facilitate any further similar updating needed in the future. The Department will be able to amend the two Articles to add to the supplies which they cover,

- a supply of gas, electricity, water, sewerage, or communications services by a person of a specified description.
- a supply of IT goods and services by a person of a specified description.

Proposed amendment 2

Overriding termination clauses in contracts which would prevent the supply of essential services to businesses in the case of voluntary arrangements and administrations (corresponding to sections 93 and 94 of the Enterprise and Regulatory Reform Act 2013) and the Insolvency (Protection of Essential Supplies) Order 2015 (S.I. 2015 No. 989))

Existing legislative provision

2.1 Articles 197 and 343 of the 1989 Order do not, of themselves, provide for continuity of supply of utility services. The obligation to supply is derived, instead, from utilities legislation. By the same token simply extending Articles 197 and 343 to cover IT suppliers does not oblige IT suppliers to continue to supply insolvent businesses.

2.2 Many commercial agreements contain a termination clause which provides either for the agreement to automatically terminate, or makes it possible for it to be terminated, on the occurrence of certain events, including, almost invariably, the insolvency of either party. Suppliers of utility and IT services can withdraw their supply at the onset of formal insolvency by relying on such clauses in supply contracts. Disruption to the supply of essential services to a business, due to insolvency proceedings triggering termination clauses in contracts with key suppliers, can ruin any chance of a successful restructuring or recovery.

2.3 Because they have the power to withdraw supplies, essential suppliers can also demand additional "ransom" payments as a condition of maintaining supply. They can put businesses which have entered formal insolvency on to more expensive tariffs or change the terms of supply more generally. Demanding "ransom" payments, or varying the terms of supply, can add to the pressures on the business's finances at a critical time and significantly damage the prospects for the rescue of otherwise viable businesses.

The proposed amendments

2.4 A new Article 197A has been inserted into the 1989 Order by section 17 of the Corporate Insolvency and Governance Act 2020.

2.5 New Article 197A provides that termination clauses in contracts for the supply of essential goods or services (utilities and IT) are to cease to have effect if a company enters administration or a voluntary arrangement. There are safeguards for suppliers, including that the High Court will be able to grant permission for termination of the contract if it would cause hardship to the supplier and the supplier will be able to terminate the contract if supplies made after the company's entry into administration or a voluntary arrangement are not paid for within 28 days of payment becoming due. The supplier will also have the right to insist on the administrator or supervisor of the voluntary arrangement personally guaranteeing payment as a condition of continuing supply.

2.6 It is intended to insert a new Article 343A into the 1989 Order which would similarly provide for termination clauses in contracts for the supply of essential goods or services (utilities and IT) to businesses being carried on by individuals or partnerships to cease to have effect if the individual or a member of the partnership enters a voluntary arrangement.

2.7 The Department also proposes to take powers to make regulations for the purpose of rendering termination clauses in contracts for the supply of utility services and IT related goods and services inoperative in the case of the main rescue procedures, that is, administration and company and individual voluntary arrangements. Any regulations would be for the purpose of requiring utility suppliers to continue to supply insolvent businesses, and would be subject to a number of safeguards for suppliers, including being able to ask for a personal guarantee from the insolvency office-holder as a condition of continuing supply (there would be power to create exceptions to this right) and the right to withdraw supply if it is not paid for within 28 days from payment becoming due. The supplier would also have the right to apply to the Court for permission to terminate the contract if they believe that being required to continue the supply would cause them undue hardship.

2.8 The Department would, in addition, be able to use its powers to render void contract terms which provide an automatic increase in charges, or which permit the supplier to increase their charges, in the event of a business customer entering administration or a company or individual voluntary arrangement (so called "ransom" payments).

Proposed amendment 3

Replacement of reference to being adjudged bankrupt under the Insolvency Act 1986 (corresponding to paragraph 58 of Schedule 19 to the Enterprise and Regulatory Reform Act 2013)

3.1 Article 349(4) of the 1989 Order currently provides that a person is not qualified to act as an insolvency practitioner if they have been adjudged bankrupt under that Order or "the 1986 Act".

3.2 "The 1986 Act" refers to the Insolvency Act 1986 applying in England and Wales. However, the law in England and Wales has been changed and the courts in England and Wales are now only responsible for adjudging individuals bankrupt in creditor petition cases. Individuals seeking to have themselves declared bankrupt no longer petition the Court but apply instead to an adjudicator.

3.3 The phrase "adjudged bankrupt" is being replaced by "made bankrupt" as this covers both bankruptcy orders made by the Court on creditor petitions and bankruptcy orders made by the adjudicator on debtor applications. It is therefore proposed to amend Article 349(4)(a) to refer to being adjudged bankrupt under this Order or made bankrupt under the 1986 Act.

PROPOSED AMENDMENTS TO THE INSOLVENCY (NORTHERN IRELAND) ORDER 1989 DRAWN FROM THE DEREGULATION ACT 2015

Proposed amendment 4

To ensure that if a winding-up petition is presented after notice of intention to appoint an administrator has been given, the company or its directors can still go ahead with the appointment (corresponding to paragraph 5 of Schedule 6 to the Deregulation Act 2015)

Existing legislative provision

4.1 Paragraph 23 of Schedule B1 to the 1989 Order gives a company, or its directors, power to appoint an administrator. Under paragraph 27, five business days' written notice of intention to make the appointment has to be given to anyone entitled to appoint an administrative receiver or administrator.

4.2 A copy of the notice has to be filed in the High Court and once this has been done an interim moratorium comes into force which prevents an order being made to have the company wound up. The appointment of the administrator has to take place no later than 10 business days after the notice of intention to make the appointment has been filed in Court. The interim moratorium can last for up to 10 business days, or until the appointment is made, if this happens before the 10 days is up. However, there is nothing to prevent a petition to have the company wound up being presented while the interim moratorium is in force and paragraph 26 of Schedule B1 to the 1989 Order states that an administrator cannot be appointed under paragraph 23 if a petition for the winding up of the company has been presented and not yet disposed of. Presentation of a petition during the interim moratorium could, therefore, result in the appointment of an administrator being delayed while the Court deals with the petition.

The proposed amendments

4.3 It is proposed to amend paragraph 26 of Schedule B1 to the 1989 Order to create an exception to the bar on the appointment of an administrator if a petition to have a company wound up has been presented. The exception would provide for the bar not to apply if the petition was presented after notice of intention to appoint an administrator had been filed in Court. This would prevent the appointment of administrators under paragraph 23 being delayed by the illegitimate presentation of winding up petitions.

Proposed amendment 5

To establish more precisely the circumstances in which notice of intention to appoint an administrator has to be given to prescribed persons (corresponding to paragraph 6 of Schedule 6 to the Deregulation Act 2015)

Existing legislative provision.

5.1 Under paragraph 27(2) of Schedule B1 to the 1989 Order anyone proposing to appoint an administrator under paragraph 23 has to give notice of their intention to appoint an administrator to prescribed persons. This requirement only needs to apply in cases where paragraph 27(1) of Schedule B1 applies, that is, in cases where as well as the prescribed persons, there are persons who would in certain circumstances be entitled to appoint an administrative receiver or administrator, as only they have the power to block the appointment of an administrator. There is no point in sending notice of intention to appoint an administrator to the prescribed persons in cases where there is no-one who would be entitled to appoint an administrative receiver or administrator as the prescribed persons would have no power to block the appointment.

The proposed amendments

5.2 It is proposed to amend paragraph 27(2) of Schedule B1 to provide that it is applicable solely in circumstances where paragraph 27(1) is also of operative effect. This would prevent unnecessary delay in the appointment of administrators caused by notices of Intention to appoint having to be issued to prescribed persons in cases where there is no-one with any right to block the administrator's appointment. This would also eliminate the need for copies of notices of Intention issued to prescribed persons having to be filed in Court in such cases.

Proposed amendment 6

To simplify the procedure for an administrator to obtain his or her release in cases where there is no distribution to unsecured creditors other than out of the prescribed part (corresponding to paragraph 7 of Schedule 6 to the Deregulation Act 2015)

Existing legislative provision

6.1 Paragraph 99(2)(b) of Schedule B1 to the 1989 Order makes provision for the release of administrators appointed otherwise than by the Court. It is to be by resolution of the creditors' committee or, if there is no committee, by resolution of the creditors. Release is the release of an office-holder from liability in respect of his or her acts or omissions as an office-holder.

The proposed amendments

6.2 It is proposed to amend paragraph 99(2)(b) of Schedule B1, so that a formal resolution by the creditors would not be needed in cases where there is no money for a distribution to unsecured creditors, or any money there is, would come out of the prescribed part. Administrators would instead be able to obtain their release by the "approval" of the secured creditors and, if they are going to receive a dividend, the preferential creditors. The "prescribed part" is a proportion of a company's assets over which a floating charge holder has security which can, nonetheless, be made available to unsecured creditors in certain circumstances.

Proposed amendment 7

To do away with the Court's power to order money due to a company which has been compulsorily wound up to be paid into a bank appointed by the Court (corresponding to paragraph 9 of Schedule 6 to the Deregulation Act 2015)

7.1 It is proposed to repeal Article 129 of the 1989 Order, which allows the High Court to order payment of money due to a company it has wound up to be made into a bank appointed by the Court instead of directly to the liquidator and provides for such money to be subject to the orders of the Court.

7.2 The corresponding provision applying in E&W, section 151 of the Insolvency Act 1986, has been repealed. The origins of that provision date back to the Companies Act 1862 and it appears that its purpose was to protect creditors' interests from an unregulated insolvency profession. Since 1986 (1989 in Northern Ireland) there has been a strong regulatory framework in place to monitor and control the activities of liquidators and the provision no longer serves any useful purpose. The last recorded use of section 151 of the Insolvency Act 1986 was in 1991.

Proposed amendment 8

To make provision to enable the liquidator to have his or her release on a winding up order being rescinded (corresponding to paragraph 10 of Schedule 6 to the Deregulation Act 2015)

8.1 Article 272(4) of the 1989 Order makes provision for the trustee's release in the event of a bankruptcy order being annulled. However, there is currently nothing to provide for the liquidator's release on a winding up order being rescinded.

8.2 It is proposed to insert provision into Article 148 of the 1989 Order to allow for liquidators to be released from such time as the Court may determine when a winding up order is rescinded.

Proposed amendment 9

To make it possible for insolvency practitioners to be appointed as interim receivers (corresponding to paragraph 13 of Schedule 6 to the Deregulation Act 2015)

Existing legislative provision

9.1 Under Article 259(1) the High Court can, if necessary, appoint an interim receiver to safeguard a debtor's property during the period between the presentation of a bankruptcy petition and the hearing of the petition by the Court. An interim receiver can also be appointed under Article 259(2) where the Court has appointed an insolvency practitioner under Article 247 to report on whether a debtor who has petitioned for bankruptcy should instead make a proposal for a voluntary arrangement.

9.2 Under Article 259(1) as it stands, only the Official Receiver can be appointed as interim receiver. Under Article 259(2) the interim receiver can be either the official receiver or the insolvency practitioner appointed under Article 247.

The proposed amendments

9.3 It is proposed to amend Article 259(1) to permit the Court to appoint an insolvency practitioner as interim receiver as an alternative to appointing the Official Receiver. Article 259(2) would be amended to allow a different insolvency practitioner to the one appointed under Article 247 to be appointed as interim receiver.

Proposed amendment 10

To provide that persons made bankrupt on a creditor's petition will only have to submit a statement of affairs if the Official Receiver requires them to do so (corresponding to paragraph 15 of Schedule 6 to the Deregulation Act 2015)

Existing legislative provision

10.1 Article 261 of the 1989 Order, as it stands, requires anyone made bankrupt on a creditor's petition to submit a statement of affairs to the Official Receiver within 21 days unless the Official Receiver releases them from this obligation or extends the 21-day period.

The proposed amendments

10.2 It is proposed to amend Article 261 to replace the requirement for the bankrupt to deliver a statement of affairs in every case with a power for the Official Receiver to require the bankrupt to submit a statement of affairs if he deems it appropriate.

PROPOSED AMENDMENT TO THE COMPANY DIRECTORS DISQUALIFICATION (NORTHERN IRELAND) ORDER 2002 DRAWN FROM THE DEREGULATION ACT 2015

Proposed amendment 11

To enable the Department to obtain information directly from directors of insolvent companies (corresponding to paragraph 11 of Schedule 6 to the Deregulation Act 2015)

Existing legislative provision

11.1 Article 10 of the 2002 Order deals with applications to the High Court to have directors disqualified on grounds of unfitness and acceptance by the Department of undertakings as an alternative to the making of disqualification orders by the Court.

11.2 Article 10(5) of the 2002 Order, as it stands, provides that the Department or the Official Receiver can, for the purpose of exercising, or deciding whether to exercise any of their functions under Article 10, require liquidators, administrators or administrative receivers to provide information about a director's conduct and to permit inspection of books and records relevant to their conduct. However, there is nothing to allow the Department or Official Receiver to seek the information directly from anyone else capable of providing information about a director's conduct, including directors themselves.

The proposed amendment

It is proposed to amend Article 10 to enable the Department or the Official Receiver to obtain information directly from third parties, including directors, without having to go through the office holder, where the information is reasonably required for the purpose of determining whether disqualification proceedings should be brought.

PROPOSED AMENDMENTS TO THE INSOLVENCY (NORTHERN IRELAND) ORDER 1989 DRAWN FROM THE SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT ACT 2015

Proposed amendment 12

To give administrators the right to take action for fraudulent or wrongful trading (corresponding to section 117 of the Small Business, Enterprise and Employment Act 2015)

Existing legislative provision

12.1 Provisions already exist in the 1989 Order which allow a liquidator to take action against the directors where a company has, with their knowledge: -

- carried on business with intent to defraud creditors or for any fraudulent purpose (fraudulent trading) – Article 177, or
- continued to trade when the director knew, or ought to have known, that there was no way it could avoid insolvent liquidation (wrongful trading) – Article 178.

12.2 In both instances, a successful case presented by the liquidator can lead to the responsible directors being ordered to make a contribution to the insolvent company's assets.

12.3 Neither provision is a sanction available to administrators. If an administrator considers that wrongful or fraudulent trading has taken place in a company over which he or she has been appointed and the administrator is unable to rescue the company, the administrator would have to put the company into voluntary liquidation to pursue such an action. This is an unnecessary move, which increases the costs of the insolvency and thereby reduces the assets available for creditors.

12.4 If liquidation cannot be commenced because the administration is not ready to be concluded proceedings against the directors concerned will be delayed.

The proposed amendments

12.5 It is proposed to amend the 1989 Order to give administrators the same powers to take action for wrongful or fraudulent trading as are currently available to liquidators.

Proposed amendment 13

To give liquidators and administrators the right to assign causes of action (corresponding to section 118 of the Small Business, Enterprise and Employment Act 2015)

Existing legislative provision

13.1 Under the 1989 Order, as it stands, a liquidator can bring a civil claim for fraudulent or wrongful trading against the directors of an insolvent company. A successful application by the liquidator can lead to the directors responsible being required by the Court to make a personal contribution to the insolvent company's assets. However, the liquidator has no right to sell or assign the action in the way that they can sell or assign other assets of an insolvent company. Likewise, although claims for transactions at an undervalue, the giving of preferences and extortionate credit transactions can be brought under the existing law by both liquidators and administrators, neither can sell or assign any of these actions. This means that if the liquidator or administrator does not have sufficient funds to pursue the claim there is no way of securing financial redress for the creditors by means of any of these actions, however strong the claim.

The proposed amendments

13.2 A complaint frequently heard from creditors is that although disqualification can prevent a director acting as such in the future, it provides no compensation to those who have suffered from their misconduct. Ways need to be found to increase trust in our regime by ensuring that if directors (and those advising them) act fraudulently, negligently, or recklessly they will run the risk of being required to personally compensate those who have suffered loss as a result, and to ensure that directors are aware of this.

13.3 We, therefore, want to increase the chances of culpable directors being pursued where they have been responsible for causing or allowing companies to trade wrongfully or fraudulently.

13.4 We propose to do this by granting liquidators and administrators (once they have acquired the right to bring claims for fraudulent and wrongful trading) the statutory right to sell or assign fraudulent and wrongful trading actions. This would enable the liquidator or administrator to sell the claim to an individual creditor, group of creditors or possibly even a third party. We also propose to allow liquidators and administrators to assign and sell claims in respect of transactions at an undervalue, the giving of preferences and extortionate credit transactions.

13.5 There are firms in the private sector that specialise in acquiring civil insolvency claims and who would have an interest in acquiring or advising in relation to this type of litigation. Creditors would benefit from the proceeds of the sale and the claim would be more likely to be pursued. Subject to the terms of the assignment, the purchaser could take all the risk and bear all the cost of pursuing the prospective claim but would stand to gain fully from potential benefits arising from the action. We anticipate that a market for these actions would develop and increase the prospect of actions being taken against directors more frequently.

13.6 The right to pursue an action would constitute an asset of the insolvent company. Unpaid creditors of the company would therefore benefit, to the extent that proceeds from the assignment of an action increase the prospect of a dividend being paid. Once directors realise that the threat of action is real, they may be more likely to offer to settle and long-term changes in behaviour could potentially result.

Proposed amendment 14

To ensure that proceeds of office-holder claims go to ordinary creditors (corresponding to section 119 of the Small Business, Enterprise and Employment Act 2015)

Existing legislative provision

14.1 There are provisions in the 1989 Order which allow claims to be brought by administrators or liquidators or both for: -

i. fraudulent trading (Article 177)
ii. wrongful trading (Article 178)
iii. transactions at an undervalue (Article 202)
iv. the giving of preferences (Article 203)
v. extortionate credit transactions (Article 206)

14.2 It has been established by case law in GB that the proceeds of such claims do not form part of the company's property which is available for the satisfaction of debts due to creditors with floating charge security.

The proposed amendments

14.3 It is proposed to codify the law by amending the 1989 Order to provide that where an administrator or liquidator has either brought any of these five types of claim or has assigned the right to take action in respect of such a claim, the proceeds of the claim are not to be used to make payments to floating charge holders or to holders of debentures secured by floating charges.

Proposed amendment 15

To allow liquidators and trustees to undertake various acts without needing to obtain sanction (corresponding to sections 120 and 121 of the Small Business, Enterprise and Employment Act 2015)

Existing legislative provision

15.1 The powers of a liquidator in a winding up, and of a trustee in bankruptcy, are set out respectively in Schedules 2 and 3 to the 1989 Order.

15.2 There are requirements under Articles 140 and 142 of the 1989 Order for liquidators in both voluntary and compulsory liquidations to obtain sanction before exercising certain of the powers in Schedule 2.

15.3 The required sanction takes various forms: -

- in the case of a members' voluntary winding up, it is a special resolution of the company;
- in the case of a creditor's voluntary winding up, it is sanction from the High Court or the liquidation committee, or if there is no committee, a meeting of the company's creditors; and
- in the case of a winding up by the Court, it is the sanction of the Court or the liquidation committee.

15.4 There are requirements under Article 287 for trustees in bankruptcy to obtain permission from the creditors' committee or the High Court to exercise certain of the powers in Schedule 3.

15.5 In practice the High Court's function of granting sanction is exercised by the Department on its behalf.

The proposed amendments

15.6 It is proposed to amend Articles 140, 142, and 287 of, and Schedules 2 and 3 to, the 1989 Order to remove all requirements for liquidators and trustees to obtain sanction. "Sanction" is a form of permission to exercise certain powers e.g. in a bankruptcy to bring, institute or defend any action or legal proceedings relating to the property comprised in the estate. The proposal would enable liquidators to exercise all of the powers contained in Schedule 2 to the 1989 Order and trustees to exercise all of the powers contained in Schedule 3 to that Order, without sanction.

15.7 Whilst the changes would also affect the Official Receiver, in practice actions to protect or recover assets are, in the vast majority of cases, taken by insolvency practitioners (IP) acting as liquidator or trustee.

15.8 The requirement to obtain "sanction" to undertake certain actions exists to protect the insolvent estate, largely by restricting the exercise of certain powers that have a risk of resulting in a negative financial impact. An example is the commencement of certain legal proceedings where an unsuccessful outcome could result in a reduced return to creditors. Sanction for these actions is currently required from the creditors' committee, or, where there is none, from the Department.

15.9 The vast majority of sanction applications are made to the Department in the absence of a creditors' committee. They are largely routine in nature and are unlikely to require the exercise of significant discretion. As regulated professionals, IPs acting as liquidator or trustee are expected to act in the interests of creditors and should not undertake actions that are likely to have a negative financial impact on the estate. Such conduct may give rise to disciplinary concerns which may be addressed through the regulatory system, which did not exist when the requirement to obtain sanction was introduced.

15.10 Sanction is not required in administration where the value of the assets can often be expected to be greater than in liquidation or bankruptcy, although general permission to commence certain actions may be obtained from creditors through the approval of the administrator's proposals. No concerns have been raised about the ability of administrators to exercise all powers available to them either without sanction or where permission has been obtained through approval of the administrator's proposals. Consequently, it is considered that the current requirement to obtain sanction in liquidation and bankruptcy is outdated and imposes a burdensome requirement that adds no practical value to case administration.

15.11 The proposal builds on incremental changes made by the Insolvency (Amendment) Act (Northern Ireland) 2016 which removed the requirement to obtain sanction for a limited number of actions and will bring the regime for liquidation and bankruptcy into line with administration and administrative receivership, where no sanction at all is required. The proposal would affect both IPs and the Official Receiver when acting as liquidator or trustee.

Proposed amendment 16

To remove meetings of creditors as the default position in insolvency proceedings (corresponding to sections 122 and 123 of the Small Business, Enterprise and Employment Act 2015)

Existing legislative provision

16.1 Calling a meeting of creditors is the default position to ascertain creditors' wishes in all insolvency procedures. Even where meetings can be dispensed with this is depicted as an exception to the default position that there must be a meeting. For example, in an administration the administrator must call a meeting unless he or she does not think that there will be funds available for unsecured creditors.

16.2 This defaulting to meetings dates to the Victorian beginnings of modern insolvency law. Meetings, as a way of seeking the views or sanction of creditors and members, were a feature of nineteenth century insolvency legislation. A physical gathering of interested parties, in order to reach a majority view on future progress, was logical when financial failure was a local matter and where modern forms of communication did not exist. Controlling the insolvency through physical gatherings of creditors was the only sensible (and viable) option.

16.3 As insolvency law developed throughout the 20th century, these features were retained. Where new insolvency procedures were developed - such as administration, company voluntary arrangements and individual voluntary arrangements – they too incorporated meetings within their structure, modelled on those procedures that had gone before them.

The proposed amendments

16.4 In the 21st Century, creditor bases are likely to be national or even international and the debtor/creditor relationship itself is likely to be less personal. Attempting to call a physical gathering of interested parties is anachronous in many cases.

16.5 There are now a number of ways in which information can be passed between parties interactively, but the central requirement to have a meeting (or make an informed decision not to have one) still remains.

16.6 Government is considering whether this need to have a meeting is necessary in all those cases where they currently take place.

16.7 We propose that in future the default position will be that there will be no meeting, unless a minimum number of creditors or contributories request one in writing. That minimum would be any of the following: -

- 10% in value of the creditors or contributories; or
- 10% in number of the creditors or contributories; or
- 10 creditors or contributories.

16.8 There will be provision to allow decisions in company insolvencies to be taken by what is termed a qualifying decision procedure and in individual insolvencies by what is termed a creditors' decision procedure. Qualifying decision and creditors' decision procedures will be procedures laid down in, or authorised by, Rules.

16.9 However, we envisage that, in most cases the office-holder will issue documents to the creditors or contributories, as the case may be informing them of the decision he or she proposes to make and that the creditors or contributories will be treated as having made this decision unless 10% or more of them by value object in writing. (Following changes to the law by the Insolvency (Amendment) Act (Northern Ireland) 2016, 'in writing' would include an objection made in an electronic form, such as an email).

16.10 This objection would be to the office-holder, not to the court. We refer to this process as one of "deemed consent" in the rest of this Part of the consultation. Any resolution at a meeting would still require a simple majority by value of claims (or, for a voluntary arrangement, 75% or more by value).

16.11 This proposal would mean, in practice: -

- creditors' meetings in voluntary liquidations (also known as 'Article 84 meetings') would not necessarily be required in every case. The liquidator appointed by the company would inform creditors of his/her appointment and, unless sufficient numbers objected, that liquidator would stay in place.
- administrators' proposals would be accepted unless sufficient creditors informed the administrator that they objected, at which point a meeting could be called.
- where he/she thought appropriate, the Official Receiver would write to creditors seeking nominations as trustee/liquidator, with such nominations handled via correspondence.

16.12 The office-holder would have to provide creditors with clear, simple and easy to achieve methods by which they could raise objections. The office-holder would also have to explain fully the effect that not raising an objection would have.

16.13 We envisage that there would be some limited exceptions to deemed consent: -

- The setting of the basis of an insolvency office-holder's remuneration is excluded from this proposal – the active consent of creditors, obtained by a qualifying decision procedure, would continue to be required.
- Where there is a requirement in the 1989 Order, the Rules or any other legislation for a decision to be made by a qualifying decision procedure.
- Where the Court orders that a decision is to be made by a qualifying decision procedure.

16.14 Deemed consent is not a measure to free IPs or the Official Receiver from properly engaging with creditors, nor is it a measure that will abolish all meetings from taking place in all procedures. We expect that the overall quality of engagement will improve, as meetings will only be held where they have been requested by the minimum number of creditors. Meetings that are, essentially, only paper exercises that exist only to meet a (potentially costly) statutory requirement will no longer need to be held.

16.15 The existing provision whereby creditors can requisition a meeting at any time during the procedure (at their cost) will be unaffected by this proposal. Similarly, the power of the insolvency office-holder to call a general meeting of creditors at any time will be unchanged.

16.16 It is estimated that the removal of this requirement will result in a reduction of about 30% in the volume of meetings held saving approximately £32,000 per annum, as outlined in the Regulatory Impact Assessment included as part of the consultation package.

Proposed amendment 17

To do away with the requirement to hold final meetings in liquidations and bankruptcies (corresponding to paragraphs 18, 29, 38, and 83 of Schedule 9 to the Small Business, Enterprise and Employment Act 2015)

Existing legislative provision

17.1 A final meeting of creditors is required in all voluntary liquidations and in all compulsory liquidations and all bankruptcies where an IP is liquidator or trustee.

17.2 Under Article 80 of the 1989 Order, a final meeting must be held in the case of a members' voluntary winding up and under Article 92 one must be held in the case of a creditors' voluntary winding up. Under Article 124, a final meeting must be held in a winding up by the Court where an IP is liquidator and under Article 304 a final meeting must be held in a bankruptcy where an IP is trustee.

17.3 No final meeting is required in an administration, administrative receivership or voluntary arrangement or where the Official Receiver is office holder in a compulsory liquidation or bankruptcy.

17.4 Liquidations and bankruptcies can take a number of years to complete, depending on the nature of the assets which the office-holder has to deal with. Final meetings in such cases are poorly attended, if attended at all, being held so long after commencement. Little, if any, value is added by such meetings but they add additional cost to the procedure.

The proposed amendments

17.5 It is proposed that the need to have a final meeting is abolished in all cases where they are not required. Information on the case will still be provided to the creditors, who have rights to ask for further information if they wish. These existing rights will be unaffected. If, exceptionally, there are matters that the office-holder does want to meet with creditors about towards the end of a case, the office-holder's right to call a general meeting of creditors at any time (which is not being amended) could be used.

17.6 We estimate that the removal of the requirements to call final meetings will result in savings of approximately £91,000 per annum, as outlined in the Regulatory Impact Assessment.

Proposed amendment 18

To allow creditors to opt out of receiving certain notices (corresponding to sections 124 and 125 of the Small Business, Enterprise and Employment Act 2015)

Existing legislative provision

18.1 Insolvency proceedings are carried out in creditors' interests. However, some statutory interactions between creditors and an office-holder can be bureaucratic and of little use to either party. Government wants to increase the quality and ease of communication between the two parties, while reducing overly burdensome, inflexible and unnecessary contact.

18.2 To ensure creditors are kept well-informed of developments, insolvency legislation requires office-holders to send a variety of documents to creditors throughout the course of an insolvency. For example, in an administration, the documents that an administrator has to send to creditors include:-

i. notice of his/her appointment at the commencement of a case;
ii. proposals for achieving the objective of the administration within 8 weeks of the commencement;
iii. the result of a meeting of creditors or that the proposals have been deemed approved without a meeting;
iv. a progress report after 6 months (and every 6 months thereafter);
v. notice of any extension to the period of administration granted by the court or with consent of creditors;
vi. notice that there is to be a dividend or that there is to be no dividend and, where appropriate, to subsequently distribute that dividend; and
vii. a final progress report at the end of a case.

18.3 This information has to be forwarded regardless of the level of continuing interest that a creditor has in a case, which may be small if told at the outset that the chances of a distribution are slim.

The proposed amendments

18.4 Amendments to the law made by the Insolvency (Amendment) Act (Northern Ireland) 2016 would permit this information to be sent by electronic means (with the written consent of the creditor).

18.5 What has never been permitted is for a creditor to inform the office-holder that he or she no longer wishes to receive **any** further information on a case. This means that, in practice, office-holders have to produce and dispatch correspondence to creditors, many of whom have no continuing interest in a case having already written off their debt. In effect, officeholders are printing and posting documents to some creditors that are destined to be thrown away, unread. This is inefficient, and wasteful.

18.6 Under new provisions to be inserted into the 1989 Order, once creditors have notified the office-holder that they do not wish to receive future correspondence, any provision in the Insolvency Rules (Northern Ireland) 1991 which would otherwise require notices to be sent to them will no longer apply.

18.7 This will mean that in future, creditors in both company and individual insolvency proceedings will be able to notify the office-holder that they do not want to receive any further correspondence on a case and the office-holder will be required to omit them from future mailings, thereby easing the administrative burden on the procedure.

18.8 As asset-related matters may prove fluid over time, notices in relation to distributions will be excluded from this provision (other than any notice required stating that there will be no distribution or no further distribution).

18.9 This proposal is intended as a flexible tool, to remove the burden from creditors of receiving unwanted, sometimes quite lengthy, correspondence. Reducing the number of such documents posted to creditors will also lower the cost of the insolvency itself. Creditors who are content to continue to receive information will not have to inform the office-holder – receipt of documents will continue to be the default position.

18.10 It is estimated that the implementation of this proposal will result in savings of approximately £167,000 per annum, as outlined in the Regulatory Impact Assessment.

Proposed amendment 19

To double the period for which an administrator's appointment can be extended with the consent of creditors to one year (corresponding to section 127 of the Small Business, Enterprise and Employment Act 2015)

Existing legislative provision

19.1 Under current legislation, administrations end automatically after 12 months. They can be extended beyond this time:-

i. with the consent of creditors (once only, for 6 months and provided they have not already been extended by the court); or
ii. otherwise as permitted by the court.

The proposed amendments

19.2 Administration is intended as a dynamic rescue procedure which, other than in exceptional cases, should not take a lengthy period of time to conclude.

19.3 IPs who responded to the Red Tape Challenge initiative in GB asked that this limit be removed, as it resulted in costly applications to court in many cases. Between its inception in 1989 and changes to the law in 2005, administration had no upper time limit. The inclusion of a time limit in the revamped, streamlined administration procedure introduced by the Insolvency (Northern Ireland) Order 2005 was to ensure that the process became rapid and efficient. Removing the current time limit could endanger this.

19.4 It is appreciated that court applications can be costly, costs that are ultimately borne by creditors in reduced returns. However, completely removing the time limit could also be costly to creditors – the longer a case goes on for, the higher the costs can be expected to be.

19.5 Research carried out in GB indicates that between 40-45% of administrations end within a year, with around 80% being completed within 18 months. Fewer than 8% of administrations last for over two years.

19.6 To ease the burden on administration costs, while still encouraging a swift resolution to the procedure, we propose to amend paragraph 77(2)(b) of Schedule B1 to the 1989 Order to increase the maximum period for which creditors can allow an administration to be extended from the current 6 months to 12 months.

19.7 This will balance reducing costs - by limiting the need for applications to court - with not unnecessarily loosening the control of creditors over the length of the procedure.

19.8 It is estimated that this measure will result in savings of approximately £15,000 per annum, as outlined in the Regulatory Impact Assessment.

Proposed amendment 20

To allow administrators to make payments to unsecured creditors out of the prescribed part without having to seek permission from the Court (corresponding to section 128 of the Small Business, Enterprise and Employment Act 2015)

Existing legislative provision

20.1 Where a company is in liquidation or administration or a provisional liquidator or receiver has been appointed, Article 150A of the 1989 Order ring-fences part of the company's property which would otherwise be available for the satisfaction of claims from floating charge-holders or from holders of debentures secured by floating charges. The property which is ring-fenced is known as the prescribed part and has to be used to meet claims from unsecured creditors, unless it is more than required for that purpose, in which case whatever is left over can be used to make payments in respect of floating charges.

20.2 The prescribed part is set as percentages of the net property which would otherwise have been available to satisfy claims from floating charge-holders or from holders of debentures secured by floating charges by the Insolvency (Northern Ireland) Order 1989 (Prescribed Part) Order (Northern Ireland) 2006.

20.3 Paragraph 66(3) of Schedule B1 provides that administrators must seek permission from the High Court if they wish to make a distribution to non-preferential creditors who do not hold security. The reason for this is that where there are funds left over after secured creditors have been paid, the office-holder should consider whether the administration should be converted into a creditors' voluntary liquidation as this provides for increased engagement of unsecured creditors.

20.4 In England and Wales the requirement to seek the Court's permission before making a distribution to unsecured creditors has been widely interpreted as applying to payments made to unsecured creditors out of the prescribed part.

The proposed amendments

20.5 It is proposed to amend paragraph 66(3) of Schedule B1 to the 1989 Order to provide that the Court's permission is not required if a distribution to unsecured creditors is being made out of the prescribed part.

20.6 A similar amendment would be made to paragraph 84 of Schedule B1 to ensure that the process for moving from administration to a creditors' voluntary liquidation is not triggered by the making of a payment to unsecured creditors out of the prescribed part.

Proposed amendment 21

To remove the need for creditors to claim for small debts (corresponding to sections 131 and 132 of the Small Business, Enterprise and Employment Act 2015)

Existing legislative provision

21.1 Provision as to the manner of proving a debt can, under Schedule 5 to the 1989 Order, be included in company insolvency rules and under Schedule 6, in individual insolvency rules.

21.2 The Rules provide that creditors wishing to recover a debt must submit a proof of debt claim to, in bankruptcies, the Official Receiver or trustee, or, in the case of companies being wound up by the Court, to the liquidator.

21.3 To receive a payment in an insolvency, a creditor must first submit a claim to the officeholder, which must contain certain statutory information. The office-holder may ask for further evidence from the creditor if thought necessary. Such claims must be scrutinised by the office-holder prior to distribution.

21.4 This process creates a burden on both the creditor, in having to complete the claim form, and on the insolvency itself, by the office-holder spending time verifying the claim. It is possible that, for smaller claims in cases where a comparatively small distribution is expected, this burden may itself deter creditors from making claims.

The proposed amendments

21.5 It is proposed to amend Schedules 5 and 6 to the 1989 Order to create a power to make Rules which would provide that, for debts below a prescribed amount (initially intended to be set at £1,000) an office-holder will not need a claim form from the creditor and will instead be able to pay a dividend based on the debt as listed in the insolvent's statement of affairs, or in their accounting records. This will save time for the creditor and lower the cost of the insolvency. It should be noted that the £1,000 threshold that is proposed relates to the level of the creditor's debt, not the expected dividend.

21.6 Where a creditor disputes the amount shown in the insolvent's statement of affairs or accounting records, they will still be able to submit a claim and provide documentary evidence in support of it. Where the insolvency office-holder is unclear on the amount owed, or has other doubts regarding the claim – if it is to a connected party, for example – he or she may still require a claim form and/or ask for documentary evidence from the creditor.

21.7 We estimate that this measure will result in savings of approximately £34,000 per annum, as outlined in the Regulatory Impact Assessment.

Proposed amendment 22

For the Official Receiver to become trustee immediately on a Bankruptcy Order being made (corresponding to section 133 of the Small Business, Enterprise and Employment Act 2015

Existing legislative provision

22.1 Currently, on the making of either a bankruptcy order or, in the case of a deceased debtor, an insolvency administration order, the Official Receiver becomes receiver and manager of the bankrupt's estate (Article 260 of the 1989 Order).

22.2 Thus, between the making of the bankruptcy order and the time at which the bankrupt's estate vests in a trustee, the Official Receiver is the receiver and, unless a special manager is appointed under Article 341, the manager of the bankrupt's estate.

22.3 As receiver and manager, the Official Receiver is responsible for protecting the assets of the insolvent person, which involves taking immediate steps to secure any property or assets which are comprised in the bankruptcy estate. The Official Receiver is therefore limited to protecting the assets and value of the estate for the benefit of those entitled to it, principally the creditors. This can include seizing and disposing of perishable goods comprised in the estate, the value of which is likely to diminish if they are not dealt with quickly. However, the property of the debtor remains vested with the bankrupt, albeit subject to the control of the Official Receiver, until such time as a trustee is in office to deal with the debtor's affairs. In cases where there are assets which need to be dealt with urgently, the Official Receiver may have no alternative except to apply immediately to the Department to have an insolvency practitioner appointed as trustee.

22.4 This position can cause confusion and, in some cases, additional expense when dealing with some assets, particularly rights of action and trading businesses. The Official Receiver is also prevented from dealing with onerous property between the making of the bankruptcy order and the trustee taking office. Consequently, the powers and scope of the Official Receiver in his duty as receiver and manager to safeguard the bankruptcy estate are limited.

22.5 With the exception of a vacancy in office occurring, there are currently two ways in which a trustee can come into office when the Official Receiver is acting as receiver and manager. The first instance is where the Official Receiver has given notice to the Court of his decision not to call a meeting of creditors for the purpose of appointing a trustee (Article 266(3) of the 1989 Order).

22.6 Within 12 weeks of the making of a bankruptcy order, the Official Receiver must decide whether to summon a general meeting of creditors to appoint a trustee or to issue a notice informing creditors that a meeting will not be held. As well as sending the notice to all known creditors the Official Receiver has to file the notice in Court. On filing the notice in Court the Official Receiver becomes trustee in bankruptcy and is able to exercise his powers as trustee for the protection and realisation of the bankruptcy estate. Once he has become trustee the Official Receiver can apply to the Department for the appointment of an insolvency practitioner to act as replacement trustee.

22.7 In addition, creditors have the right under Article 267 to requisition a general meeting to appoint a trustee. Under our proposals, this right would remain.

22.8 The second instance is if the Official Receiver calls a first meeting for the purpose of appointing a trustee. Under Rule 6.077(1) of the Insolvency Rules (Northern Ireland) 1991 the first meeting must be held no later than four months from the date of the bankruptcy order. This allows creditors the opportunity to express their views and to be involved in deciding which insolvency practitioner will be appointed as the trustee in bankruptcy.

22.9 Thus, unless an insolvency practitioner is appointed at a first meeting of creditors, the Official Receiver is currently unable to apply for the appointment of an alternative trustee, nor is he able to act as trustee until the notice of 'no meeting' has been prepared and filed at Court. This serves to add a further delay in dealing with the administration of the bankruptcy estate which, with the development of insolvency legislation and practice, adds limited benefits to the personal bankruptcy case administration process.

The proposed amendments

22.10 It is proposed to amend the 1989 Order so that the Official Receiver would automatically become trustee of a bankrupt's estate on the making of the bankruptcy order and remain as trustee unless, and until such time as, an insolvency practitioner, as is the case now, is appointed trustee in his place.

22.11 Providing for the Official Receiver to become trustee immediately on the making of a bankruptcy order would simplify the administration of bankruptcies. It would offer consistency and certainty in the case administration process for the benefit of creditors, the bankrupt and insolvency practitioners. It would remove the complication of having to make applications to the Department to have a trustee appointed in cases where assets need to be dealt with urgently. It would deliver savings to all those affected by a bankruptcy – whether as creditors, the Official Receiver or the bankrupt him/herself by encouraging the most efficient use of time and operational resources.

22.12 For instance, if the Official Receiver were to become trustee forthwith on the making of a bankruptcy order, without having to go through an intermediate stage of being receiver and manager, it would no longer be necessary for the Official Receiver to prepare, send to creditors and file at Court a notice that no meeting of creditors is being called in order to become trustee. This would offer resource and administrative savings for the Official Receiver the Court Service and creditors who receive the paperwork. The Regulatory Impact Assessment summarises the main savings.

22.13 If the Official Receiver were to become trustee on the making of the bankruptcy order, the Official Receiver would be able to use the wider powers of a trustee in circumstances where immediate action is needed. Examples are where assets are in jeopardy and would be better protected, or a better realisation value could be achieved, by an immediate sale without the added delays of needing to demonstrate the property as a diminishing asset; or the net value of a bankruptcy estate being reduced by insurance and any related charges resulting from the need to store or protect assets.

22.14 As a consequential change, the term 'interim receiver' would be changed to 'receiver'.

22.15 The court has the power to appoint an interim receiver between the presentation of the bankruptcy petition and the making of the order, where necessary, to ensure the protection of the debtor's property. In a company winding up, the equivalent to an interim receiver, who would either be the Official Receiver or an insolvency practitioner, is a provisional liquidator. With the removal of the function of the receiver and manager in bankruptcy cases, it is also proposed to change the term, 'interim receiver' to simply 'receiver'. This is intended to better describe the role of the Official Receiver or insolvency practitioner (this is the subject of a separate proposal to remove the current restriction of only allowing the Official Receiver to act in this office) appointed after the presentation of the petition and prior to the making of the bankruptcy order.

Proposed amendment 23

To abolish fast-track voluntary arrangements (corresponding to section 135 of the Small Business, Enterprise and Employment Act 2015).

Existing legislative provision

23.1 Fast-track voluntary arrangements (FTVA) are a streamlined individual voluntary arrangement (IVA) procedure for cases where a debtor has already been made bankrupt. They were first introduced in March 2006, along with other changes to personal and corporate insolvency included within the Insolvency (Northern Ireland) Order 2005.

23.2 In a FTVA the Official Receiver acts as nominee and supervisor. One of the requirements of a FTVA is that the debtor is an undischarged bankrupt at the time the proposal is made. There is no private sector IP involvement in FTVAs.

The proposed amendments

23.3 FTVAs have not been used in Northern Ireland since they were enacted. This indicates that they do not meet a need in the insolvency market, and it is proposed that FTVAs be abolished by the repeal of the provisions for FTVAs in Part 8 of the 1989 Order. Individuals who are undischarged bankrupts who wish to propose an IVA will still be able to do so, but an IP will act as nominee and supervisor, not the Official Receiver.

OTHER AMENDMENTS TO THE INSOLVENCY (NORTHERN IRELAND) ORDER 1989

Proposed amendment 24

To create a requirement for the Enforcement of Judgments Office to be notified of proposals for voluntary winding up of companies

Existing legislative provision

24.1 There are requirements under the Insolvency Rules (Northern Ireland) 1991 for the Enforcement of Judgments Office to be notified about the commencement of most forms of insolvency proceedings. For example, there are Rules requiring the EJO to be notified if a petition is presented to have an individual made bankrupt or a company wound up and a copy of each Bankruptcy or Winding up Order made has to be sent to the EJO.

24.2 However, there is no requirement in legislation for the EJO to be notified if a resolution for the voluntary winding up of a company is proposed or passed. This is a serious omission. It is desirable that the EJO should be aware of any potential insolvency event affecting a company so that it can provide up to date information to its users. Moreover, under Article 90 of the Judgments Enforcement (Northern Ireland) Order 1981 the EJO is required to retain any money it recovers by way of enforcement for a 21 day period in case it receives notice of any of a number of insolvency events having taken place.

24.3 In the case of a company, one such event is the calling of a meeting at which a resolution is to be proposed to have the company voluntarily wound up. If the resolution is passed, the EJO is required to pay the proceeds of the enforcement to the liquidator instead of to the judgment creditor. However, the absence of any requirement in legislation for anyone to notify the EJO of the calling of a meeting at which a resolution for winding up is to be proposed effectively rules out the possibility of the EJO receiving such a notice. Therefore, the possibility of the money ending up with the liquidator, to be available for the general body of creditors as intended by the legislation, is remote. It is, moreover, the case that there is nothing in legislation to require the EJO to be notified if a resolution to wind a company up voluntarily is passed and this is information which the EJO would also need to know as it is at the stage of a resolution being passed that it is supposed to pay any proceeds of enforcement it is holding over to the liquidator.

The proposed amendments

24.4 Unlike other forms of insolvency proceedings, such requirements as there are to provide notice in the case of voluntary liquidations are contained not in the Insolvency Rules (Northern Ireland) 1991 but are instead in primary legislation, to wit, Part 5 of the Insolvency (Northern Ireland) Order 1989.

24.5 We propose to insert provision into Part 5 which would oblige directors to notify the Enforcement of Judgments Office of any proposal for a resolution to have a company wound up. We also propose to insert provision to require the Enforcement of Judgments Office to be notified if the resolution is passed or if it becomes apparent that it is not going to be passed.

24.6 In both cases failure to comply would be made a criminal offence, with penalties for the company and its directors. In relation to the requirement to notify the Enforcement of Judgments Office if a resolution is passed any liquidator appointed would be deemed to be an officer of the company.

Proposed amendment 25

To correct an error in Article 239 of the 1989 Order, which makes having the right to present a bankruptcy petition to the Northern Ireland High Court conditional on the debtor being resident in, or carrying on business in Northern Ireland

Existing legislative provision

25.1 Article 239 of the 1989 Order sets out jurisdictional requirements which must be satisfied before a person can present a petition to the High Court to have either themselves or someone else made bankrupt.

25.2 The current iteration of Article 239 is a substitute made by Paragraph 177 of the Schedule to the Insolvency (Amendment) (EU Exit) Regulations 2019. This substitute was amended by paragraph 178 of the same Schedule.

25.3 Paragraph (1) of Article 239 provides that a bankruptcy petition can be presented to the High Court if:-

- the centre of the debtor's main interests is in Northern Ireland,
- the centre of the debtor's main interests is in a member State of the European Union other than Denmark and the debtor has an establishment in Northern Ireland; or
- the test in paragraph (2) is met.

25.4 The test in paragraph (2) is that;-

- the debtor is domiciled in Northern Ireland, or
- the debtor is personally present in Northern Ireland on the day on which the petition is presented, or
- at any time in the period of three years ending with the day on which the petition is presented, the debtor-

  (i) has been ordinarily resident, or has had a place of residence, in Northern Irelandor
  (ii) has carried on business in Northern Ireland.

The proposed amendments

25.5 In Northern Ireland anyone wishing to have themselves or another person made bankrupt has to petition the High Court. However, following a change to the made by the law made by the Enterprise and Regulatory Reform Act 2013, the courts in England and Wales now only deal with petitions by creditors and anyone wishing to have themselves made bankrupt has to apply to an adjudicator.

25.6 There are currently no plans to bring in similar changes in Northern Ireland so that the making of bankruptcy orders in both debtor and creditor petition cases will remain the function of the Northern Ireland High Court.

25.7 The conditions for an adjudicator to have jurisdiction to deal with bankruptcy applications are set out in a section 263I of the Insolvency Act 1986 and the conditions for the courts to have jurisdiction to hear creditor petitions are set out in section 265.

25.8 The same test is prescribed in sections 263I and 265 for use in establishing jurisdiction. However, neither section provides that the test is met if the debtor is personally present in England and Wales on the day on which the petition is presented.

25.9 To preserve parity it is proposed to amend Article 239 of the 1989 Order by removing sub-paragraph (b) in paragraph (2) which enabled the jurisdictional test to be satisfied if the debtor was personally present in Northern Ireland on the day on which the petition was presented.

25.10 This means that the test will become that-

- the debtor is domiciled in Northern Ireland, or
- at any time in the period of three years ending with the day on which the petition is presented, the debtor-

  (i) has been ordinarily resident, or has had a place of residence, in Northern Ireland, or
  (ii) has carried on business in Northern Ireland.

PROPOSED AMENDMENT TO THE COMPANY DIRECTORS DISQUALIFICATION (NORTHERN IRELAND) ORDER 2002 DRAWN FROM –

- THE ENTERPRISE AND REGULATORY REFORM ACT 2013 (CONSEQUENTIAL AMENDMENTS) (BANKRUPTCY); AND
- THE SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT ACT 2015 (CONSEQUENTIAL AMENDMENTS) REGULATIONS 2016)

Proposed amendment 26

Replacement of reference to being adjudged bankrupt by the court (corresponding to paragraph 8 of Schedule 1 to the Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016)

26.1 Article 15(1A) of the 2002 Order lists circumstances in which it is an offence for a person to act as a director or take part in the management of a company without leave of the court.

- Paragraph (1A)(a)(ii) lists as one of these circumstances that the person is an undischarged bankrupt in England and Wales or Scotland.
- Paragraph (1B) of Article 15 defines the court to which application for leave should be made.
- Paragraph (1B)(b)(i) provides that in the case of paragraph (1A)(a)(ii) the court to which the application should be made is “the court by which the person was adjudged bankrupt”.

26.2 However, the law in England and Wales has been changed and the courts are now only responsible for making individuals bankrupt in the case of creditor petitions. Anyone wishing to have themselves declared bankrupt has to apply to an adjudicator. An amendment to paragraph (1B)(b)(i) is, therefore, needed to re-define “the court” as the court by which the bankruptcy order was made, or, if it was not made by a court, the court which would hear an appeal against a refusal to make a bankruptcy order. The proposed amendment would be analogous to that made to the Company Directors Disqualification Act 1986 by paragraph 8 of Schedule 1 to the Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016.

PROPOSED AMENDMENTS TO THE INSOLVENT PARTNERSHIPS ORDER (NORTHERN IRELAND) 1995 TO REFLECT CHANGES MADE TO THE CORRESPONDING ORDER APPLYING IN ENGLAND AND WALES

Proposed amendment 27

To update the Insolvent Partnerships Order (Northern Ireland) 1995 in line with changes made to the Insolvent Partnerships Order 1994 applying in England and Wales, by various pieces of amending legislation

Existing legislative provision

27.1 The Insolvent Partnerships Order (Northern Ireland) 1995 ("the 1995 Order") provides the procedural framework for dealing with insolvent partnerships. It does so by applying provisions in the 1989 Order and the Company Directors Disqualification (Northern Ireland) Order 2002, some of which are modified in schedules to the 1995 Order.

27.2 The 1995 Order provides a range of options for dealing with partnership insolvency. A partnership can enter a voluntary arrangement or be placed in administration. The partners can jointly petition to have themselves made bankrupt or a creditor can petition to have one or more of them made bankrupt without the partnership being wound up. Alternatively the partnership can be wound up with or without the partners also being made bankrupt.

27.3 The 1995 Order corresponds to the Insolvent Partnerships Order 1994 applying in England and Wales.

The proposed amendments

27.4 It is proposed to appropriately amend the 1995 Order, to bring it as far as possible into line with the up to date Insolvent Partnerships Order 1994. This will mainly involve making amendments corresponding to ones made by:

- The Deregulation Act 2015 and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) (Savings) Regulations 2017.
- The Insolvency (Miscellaneous Amendments) Regulations 2017.

27.5 The need for corresponding amendments to the 1995 Order stems, for the most part, from amendments to the 1989 Order which it is proposed to include in the Bill, or which have already been made to the Company Directors Disqualification (Northern Ireland) Order 2002 by being included in the Small Business, Enterprise and Employment Act 2015 with the agreement of the Northern Ireland Assembly.

27.6 The amendments to the 1995 Order will:-

i. replace creditors' meetings in partnership cases with decision and deemed consent procedures;
ii. abolish the requirement for liquidators and trustees to seek sanction from the creditors, or the court to exercise certain powers;
iii. replace the need to summon final meetings in liquidations and bankruptcies with a requirement to distribute a final account;
iv. prevent presentation of a winding up petition after notice of intention to appoint an administrator for a partnership has been filed in Court being used to delay the administrator's appointment;
v. simplify the procedure for an administrator to obtain their release in cases where there is not going to be a distribution to unsecured creditors;
vi. change the minimum level of debt at which it is possible for a creditor to petition to have a member of a partnership made bankrupt from £750 to £5,000; and
vii. revise the list of matters to be taken into account when determining unfitness in partnership cases, and make it possible –
    - to disqualify persons who have instructed individuals who have been disqualified as a result of misconduct in relation to a partnership.
    - for the Department to seek compensation orders in cases where the conduct of a partner who has been disqualified has caused loss to creditors.
viii. remove references to the EU Regulation (Regulation (EU) 2015/848) of the European Parliament and of the Council, of 20 May 2015 on insolvency proceedings), where necessary as a consequence of amendments made to that Regulation by Part 1 of the Schedule to the Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146).

Proposed amendment 28

Proposed amendment to provide for provisions in the Company Director Disqualification (Northern Ireland) Order 2002 to apply where a partnership enters administration or is being wound up otherwise than as an unregistered company

28.1 The 1995 order currently provides for provisions in the Company Director Disqualification (Northern Ireland) Order 2002 to apply where a partnership is being wound up as an unregistered company. It is proposed to amend the order so that the same provisions would apply where a partnership has entered administration or is being wound up otherwise than as an unregistered company. This amendment would be unique to Northern Ireland and would rectify what is plainly a lacuna in the existing legislation.

Proposed amendment 29

Proposed amendment to remove disqualification for breach of competition law out of scope of the Insolvency Partnerships Order (Northern Ireland) 1995

29.1 We have recognised that the 1995 Order is not a suitable vehicle through which to apply to partnerships provisions in the Company Director Disqualification (Northern Ireland) Order 2002 which enable disqualification to take place as a consequence of breach of competition law.

Existing legislative provision

29.2 Under Articles 13A to 13E of the Company Directors Disqualification (Northern Ireland) Order 2002 investigations can be carried out to determine if application should be made to have the directors of a company disqualified for breach of competition law. The High Court can make a Disqualification Order or a specified regulator can accept a disqualification undertaking in cases where a company commits a breach of competition law and its directors' conduct makes them unfit to be concerned in the management of a company. There is no requirement for the company to be insolvent.

29.3 Articles 13A to 13E correspond to sections 9A to 9E of the Company Directors Disqualification Act 1986 applying in England and Wales.

The proposed amendment

29.4 Articles 13A to 13E are among the provisions of the Company Directors Disqualification (Northern Ireland) Order 2002 which are currently applied by the Insolvent Partnerships Order (Northern Ireland) 1995 where an insolvent partnership is being wound up as an unregistered company.

29.5 Breach of competition law is separate and distinct from becoming insolvent. There is little point in applying the competition law provisions to partnerships if they can only be made use of if a partnership is insolvent. For this reason we are proposing that Articles 13A to 13E should no longer be applied by the 1995 Order.

Benefit of including amendments to the Insolvent Partnerships Order (Northern Ireland 1995 in proposed primary legislation

29.6 Including the amendments needed to the 1995 Order in the Bill will allow them to be brought into operation sooner than would be the case if they were to be made using subordinate legislation.