THE INSOLVENCY SERVICE

www.insolvency.gov.uk

A consultation document on proposed changes to the Individual Voluntary Arrangement (IVA) regime contained in the Insolvency Act 1986 and associated matters

May 2007

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TABLE OF CONTENTS

1. Summary of Proposals

2. Introduction

3. Background to the Policy and Legislation at Issue

4. The Proposals

5. Analysis

Annex A List of consultees

Annex B Response Form

Annex C Legislative Reform Proposals and Orders - Parliamentary consideration

Annex D Code of Practice on Written Consultation

Annex E Regulatory Impact Assessments

CHAPTER 1. SUMMARY OF PROPOSALS

What is being consulted on?	The proposals generally relate to amending the Insolvency Act 1986 to better reflect the needs of indebted individuals. Specifically the proposals would: - • Insert Simple Individual Voluntary Arrangements (SIVA) into Part VIII of the Insolvency Act 1986 as an alternative to Individual Voluntary Arrangements. A SIVA will be better suited to the needs of indebted individuals whose affairs are straightforward. This proposal would also benefit creditors as the simplification will reduce administrative costs and is expected to generate better dividends. • Reduce the amount of routine papers filed in court in relation to the voluntary arrangements of individuals. • Reduce the amount of reports produced in the voluntary arrangements of individuals and gives those reports a better focus on the recipients' needs. • Amend section 389A of the Insolvency Act 1986 (Authorisation of nominees and supervisors) to make it clear that should a body seek recognition from the Secretary of State to act in voluntary arrangements, then the body could seek authorisation to act in an individual or company voluntary arrangement, or both. • Repeal the Deeds of Arrangement Act 1914. • Restructure and restate Part VIII of the Insolvency Act 1986 (Individual Voluntary Arrangements) to make it easier to understand.	Relevant paragraphs 38 to 40 41 to 45 46 to 49 50 to 56 57 to 63 64 to 67
How will these proposals be taken forward, and when will they be implemented?	We intend that the proposed changes to legislation be made through a Legislative Reform Order under the Legislative and Regulatory Reform Act 2006. Subject to the outcome of consultation, we propose that the changes are implemented from ***April 2008.***	
Consultation	This consultation is being made in accordance with the requirements of the Legislative and Regulatory Reform Act 2006 and the terms of the Government's Code of Practice on Written Consultations which can be accessed on http://www.cabinetoffice.gov.uk/regulation/consultation/code/ All responses should be received by 3 August 2007.	Annex D

CHAPTER 2: INTRODUCTION

BACKGROUND

1. This consultation paper sets out in detail the Government's proposals for reforming the legislation governing Individual Voluntary Arrangements (IVAs). The major proposal is to introduce a simpler version of the current IVA (SIVA). However, there are also a number of other minor proposals in the same area.

2. In 1982 in *"Insolvency Law and Practice – Report of the Review Committee*"[1] (The Cork Review), which helped frame the Insolvency Act 1986, it was recognised that a flexible alternative to bankruptcy was needed and this alternative was specifically aimed at directors of companies, members of professions and traders. This resulted in the introduction of the current IVA regime, which is administered by licensed insolvency practitioners (IPs). The regime continues to work well for such persons, whose affairs are generally more complex. However, that complexity, and the complexity of the current system, means they are relatively expensive to administer.

3. The IVA provides a flexible solution to a debtor's financial problems, balancing a debtor's need for the certainty of reasonable payments over a set, planned timetable, against the need to maximise returns to creditors. An IVA is less punitive on the debtor (in terms of the restrictions imposed) than bankruptcy but it is not a soft option. An IVA requires commitment from the debtor as it is legally binding, publicly recorded and if it fails, the debtor can still be made bankrupt.

4. Since the 1986 Insolvency Act came into force the availability of credit has increased significantly, as have the numbers of debtors with financial problems. The IVA system has not been substantially modified since its introduction and today's principal users of IVAs are not the original target group of directors of companies, members of professions and traders. Nowadays the main users of IVAs are generally in full time employment and are over indebted i.e. their income, after deducting necessary living expenses, is insufficient to service **all** their debts. They are what has been termed the "consumer debtor". Despite the recent rise in IVAs the regime still needs to be modified to further assist over indebted individuals to access a debt resolution solution that is proportionate and appropriate to their circumstances.

5. The simplification of the IVA regime will reduce the cost of administering a debtor's IVA proposal and so is expected to generate larger dividends for creditors. The simplified regime will only be available to debtors who have undisputed debts of £75,000 or less whilst the existing forms of IVAs will remain in place for those with debts in excess of that figure and those who do not want to use the regime. The proposals will affect indebted individuals, creditors, IPs and those who provide debt advice.

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[1] ISBN number 0 10 185580 (page 91)

6. This consultation paper sets out the Government's proposals for reform, of the legislation, which deals with individual insolvency in England and Wales by means of a Legislative Reform Order. The proposals would:

- Modify the existing IVA regime to accommodate the simplified version (SIVA),

- Make minor amendments to the existing IVA regime such as limiting what is required to be filed at court and affecting the way in which progress of an IVA is notified to creditors (and the court),

- Amend section 389A of the Insolvency Act 1986 so as to make it clear to prospective nominees/supervisors that they can specialise in either Individual Voluntary Arrangements or Company Voluntary Arrangements, or both,

- Contribute to de-regulation by repealing the Deeds of Arrangement Act 1914 and other legislative references to that Act, and

- Restructure and restate Part VIII of the Insolvency Act 1986 to make it easier to understand.

7. This consultation is being conducted in accordance with the provisions of section 13 of the Legislative and Regulatory Reform Act 2006*.* Views are invited on all aspects of the consultation paper, and full details about how to respond to the proposals are set out in Annex B.

8. These proposals would not impact directly on the devolved administrations.

9. We propose to introduce the reform by means of a Legislative Reform Order under the Legislative and Regulatory Reform Act 2006. This consultation is being conducted in accordance with the provisions of section 13 of the Act. Views are invited on all aspects of the consultation paper, and a number of specific questions are set out at the end of the document.

LEGISLATIVE REFORM ORDERS – BACKGROUND

10. Each proposal for a Legislative Reform Order (LRO) must satisfy a number of legal tests. The questions in the rest of this document are designed to elicit the information that the Minister will need in order to satisfy the Committees that, amongst other things, the proposals satisfy these tests.

11. For this reason, we would particularly welcome your views on how each aspect of the proposed changes in this consultation document meets the following tests:

- **Necessary protection -** The Minister making an LRO must be of the opinion that it does not remove any necessary protection. This means that no order can be made unless the Minister is of the opinion that it would maintain any protections that the Minster considers to be necessary. Such protection relates to the checks and balances associated with a particular regulatory regime. The protection does not have to be statutory in nature and does not have to be for the purposes originally intended by Parliament. If the Minister considers a particular protection to be no longer necessary, he or she must provide the Parliamentary scrutiny committees with compelling evidence to support this view.

- **Rights and freedoms** - An LRO cannot be made unless the Minister is satisfied that it does not prevent any person from continuing to exercise any right or freedom which they might reasonably expect to enjoy. This test recognises that there are certain rights that it would not be fair to take away from people under these procedures.

Other Safeguards

12. In order to provide for the effective reform of regulatory regimes, LROs can re-state existing burdens and create new burdens. But where that is the case, stringent additional safeguards apply:

- **Proportionality -** If a new legal burden is being imposed (or an existing burden is being re-enacted), then the Minister must ensure that it is proportionate to the benefit it brings. This means, for example, that imposing a burden which will cost charities several thousand pounds in return for some negligible benefit would not pass the test.

- **Fair balance -** Before proposing any LRO that has the effect of imposing new legal burdens, the Minister must be of the opinion that a fair balance is being struck between the interests of the person affected by the Order and the interests of the wider public. In this context, fairness does not mean that everyone must benefit. What it does mean is that the benefit to society as a whole must be such as to justify the additional burden on a small group or the individual.

- **Desirability** - Before proposing any LRO that has the effect of imposing new legal burdens, the Minister making the Legislative Reform Order must be of the opinion that the extent to which it removes burdens or brings other benefits makes the Order as a whole desirable.

- **Achievability** –Before proposing any LRO the Minister has to be of the view that there are no non-legislative solutions which will satisfactorily remedy the difficulty the order is intended to address.

- **Constitutional significance -** Before proposing any LRO the Minister has to be of the view that the provision made by the order is not constitutionally significant.

Consultation

13. The Act requires Departments to consult widely on legislative reform proposals. It requires us to collect evidence on a number of issues from a wide range of consultees. The list of consultees, including the devolved administrations, to whom the document has been sent, is at Annex A. It is also available on the Internet at:

- http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/insolvencylaw.htm

and

- http://www.direct.gov.uk

14. Comments are invited from all interested parties, and not just from those to whom the document has been sent. A response form is at Annex B.

15. The Parliamentary Committees who will deal with orders under the Legislative and Regulatory Reform Act 2006 have requested that a note explaining the Parliamentary process for orders to be made under the Act be annexed to all consultation papers so that consultees understand when and to whom they are able to put their views, should they wish to do so. This is set out in Annex C**.**

16. This consultation document follows the format recommended by the Cabinet Office for such proposals. The criteria applicable to all UK public consultations are set out in Annex D.

Disclosure

17. Normal practice will be for details of representations received in response to this consultation document to be disclosed, or for respondents to be identified. While the Act provides for non-disclosure of representations, the Minister is required to include the names of all respondents in the list submitted to Parliament alongside the draft Order. You should note that:

- If you request that your representation is not disclosed, the Minister will not be able to disclose the contents of your representation without your express consent and, if the representation concerns a third

party, their consent too. Alternatively, the Minister may disclose the content of your representation but only in such a way as to anonymise it.

- In all cases where your representation concerns information that may be damaging to the interests of a third party, the Minister is not obliged to pass it on to Parliament if he does not believe it to be true or he is unable to obtain the consent of the third party.

18. Please identify any information which you or any other person involved do not wish to be disclosed. You should note that many facsimile and e-mail messages carry, as a matter of course, a statement that the contents are for the eyes only of the intended recipient. In the context of this consultation such appended statements will not be construed as being requests for non-inclusion in the post consultation review unless accompanied by an additional specific request for confidentiality, such as an indication in the tick-box provided for that purpose in the response form of Annex B.

19. Finally, you should be aware that the Scrutiny Committees will be able to request sight of your representation as originally submitted. This is a safeguard against attempts to bring improper influence to bear on the Minister. We envisage that, in the normal course of events, this provision will only be used rarely and on an exceptional basis.

Freedom of information

20. It is possible that requests for information contained in consultation responses may be made in accordance with access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004). If you do not want your responses to be disclosed in response to such requests for information, you should identify the information you wish to be withheld and explain why confidentiality is necessary. An automatic confidentiality disclaimer generated by your IT system will not of itself be regarded as binding on The Insolvency Service.

21. We are seeking the views of all interested parties. Comments should be sent by 3 August 2007 at the latest to:

Andy Woodhead
Insolvency Service Policy Unit
PO BOX 203
21 Bloomsbury Street
London, WC1B 3QW

Tel: 020 7291 6738 Fax: 020 7291 6746
Email: Andy.Woodhead@insolvency.gsi.gov.uk,
from whom further copies of this document may also be obtained.

CHAPTER 3: BACKGROUND TO THE PROPOSED REFORMS

22. The current IVA regime is set out in Part VIII of the Insolvency Act 1986. In 1982 IVAs were considered in *"Insolvency Law and Practice – Report of the Review Committee*"[2] (The Cork Review), which helped frame the Insolvency Act 1986. At that time it was recognised that a flexible alternative to bankruptcy was needed. This alternative was intended for directors of companies, members of professions and traders and this resulted in the introduction of the current IVA regime. That regime continues to work well for such persons whose affairs are generally more complex. However, that complexity, and the complexity of the current IVA regime means IVAs are not cheap to administer.

23. In general terms, an IVA is a binding agreement between a debtor and his creditors in which the debtor repays his outstanding debts, either in full or in part. The debtor prepares an IVA proposal setting out details of his assets and liabilities and how they will be dealt with. All IVAs are administered by a licensed insolvency practitioner (IP) (usually a qualified lawyer or accountant). The debtor submits his proposal to his IP, called the nominee prior to the approval of such a proposal, who, before it can be proceeded with, has to form the view that it has a reasonable prospect of being approved (by the creditors) and implemented. In many cases the debtor's proposal is to make reasonable monthly payments out of his surplus income for a period of five years. However IVAs are flexible and can be based on other means of repayment such as a one-off payment from a third party. If the nominee has formed the view that the IVA proposal is viable he arranges for a meeting of creditors to be held.

24. At that meeting, creditors vote on whether or not to approve the IVA proposal and they may also suggest modifications to the proposal (which have to be agreed by the debtor). Creditors also decide who is to administer an approved proposal (the supervisor), which may or may not be the existing nominee. However the supervisor must also be an IP. The requisite majority for approving a proposal is 75% in value of those who attend or are represented at the creditors' meeting. If approved, the debtor and creditors are bound to the terms of the proposal and details of it are then filed at court. The details are also passed to the Secretary of State who arranges for them to be displayed on a publicly accessible online register; the Individual Insolvency Register.

25. In some IVA cases, prior to the creditors meeting, an application may be made to the court for an interim order to provide a moratorium against creditor actions. This moratorium remains in place until the creditors meeting approves (or rejects) the debtor's proposal.

26. However, since the 1986 Insolvency Act came into force the availability of credit has increased significantly and the principal users of IVAs these days

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[2] ISBN number 0 10 185580 (page 91)

are not the original target group of directors of companies, members of professions and traders. Nowadays the main users of IVAs are generally in full time employment and are over-indebted, i.e. their income, after deducting necessary living expenses is insufficient to service **all** of their debts. Despite the recent rise in IVAs, the regime needs to be modified to take account of these changes to ensure that over-indebted individuals have access to appropriate debt resolution processes. The table below shows that IVAs play an increasingly important role in the resolution of the financial problems suffered by the minority of borrowers who have experienced financial difficulties.

Year	IVAs
2001	6,298
2002	6,295
2003	7,583
2004	10,752
2005	20,293
2006	44,332

27. The IVA provides a flexible solution to a debtor's financial problems, balancing the debtor's need for the certainty of reasonable payments over a set, planned timetable against the need to maximise returns to creditors. An IVA places fewer restrictions on the debtor than bankruptcy but it is not a soft option. An IVA requires commitment from the debtor as it is legally binding, publicly recorded and if it fails, the debtor can still be made bankrupt.

28. Since its introduction in 1986 the existing IVA regime has not been substantially amended or augmented. However, since 1 January 2003[3], a debtor may obtain an IVA without first obtaining an interim order of the court. The introduction of these "non IO IVAs" (as well as the other provisions of the Insolvency Act 2000) have been evaluated in a report accessible on The Insolvency Service website which states:

"*The general view appears to be that interim orders are used only in situations where imminent court action is likely to jeopardise the debtor's business and/or income. The additional cost and time involved varies between providers but ranges from an extra hours work to several weeks delay and up to £1,000 in fees. An important factor is lack of court time although this may depend on location.*"[4]

29. IVAs are available to all individuals including undischarged bankrupts. Undischarged bankrupts are also eligible to propose fast track voluntary arrangements (FTVA) which were introduced on 1 April 2004, as part of the

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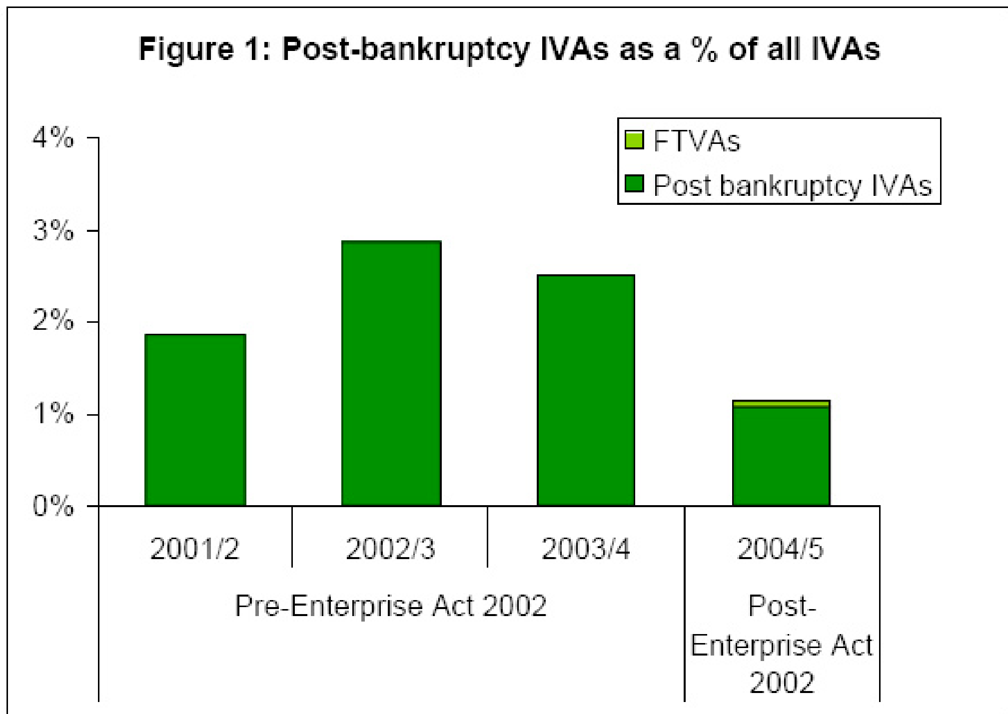
[3] http://www.opsi.gov.uk/si/si2002/20022712.htm

[4] http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/policychange/evaluationIA2000.doc (paragraph 44)

revisions to bankruptcy law made by the Enterprise Act 2002. An IP is not eligible to act in an FTVA. In his place the nominee/supervisor is the Official Receiver, an officer of the court who administers all bankruptcy cases where the bankruptcy order was made in England and Wales.

30. FTVAs are a simpler form of IVA and already embody some of the proposals for the simplification of the IVA contained in this consultation document. In an FTVA creditors cannot propose modifications to the debtor's proposal and there is no physical meeting of creditors. Instead creditors have to vote (by correspondence) for either approval or rejection of the proposal by a specified date. However, between 2001 and 2005 post bankruptcy IVAs including FTVAs comprised less than 3% of the total number of IVAs[5].



31. Over the last few years the IVA regime has been the subject of academic research and extensive discussion. It is accepted that IVAs are no longer primarily used by the groups envisaged in the Cork Report (company directors, professionals and traders) and now mainly used by over-indebted individuals who are not self-employed. The PriceWaterhouseCoopers report '*Living on Tick*'[6] provides recent information on the split between employees and the self-employed. Information from that report shows that over 90% of IVAs were entered into by those in employment.

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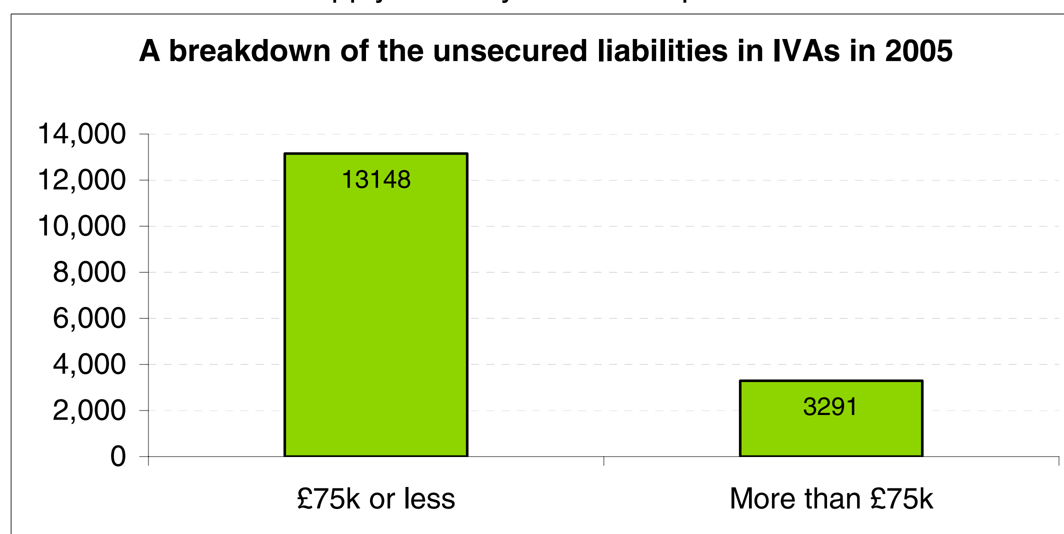
5 http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/legislation/evaluation/Iva/IVA2.pdf

6 http://www.pwc.com/extweb/pwcpublications.nsf/docid/6119F1915D59F13080257177005A23

Employees		Self employed	
Unskilled	2,504	Services	294
Managerial	866	Construction	85
Clerical	752	Retail	39
Semi skilled	543	Agriculture	6
Professional	315	Wholesale	5
Skilled manual	229	Manufacturing	4
Armed forces	130		
Company director	78		
Total	**5,417**		**433**

32. In the calendar year 2005, approximately 80% of all IVAs accepted in the 2005 calendar year [7] had unsecured liabilities of £75,000 or less which would enable them to apply for entry to the new procedure:



33. In 2004 following academic research into the IVA regime[8], The Insolvency Service hosted a forum for interested parties, which concluded that the current IVA regime could be improved. The Government agreed the following terms of reference for a working group:

"To consider the need for both legislative and non-legislative reform of the current individual voluntary arrangement process in order that it meets the needs of all individual debtors and their creditors, to make necessary recommendations for change and to report its findings."

34. The working group published its report '*Improving Individual Voluntary Arrangements'* in July 2005[9]. In March 2006 the *'Summary of Responses and Government Reply'*[10] was published.

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[7] Source: KMPG

[8] http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/con_doc_register/registerindex.htm
[9] http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/con_doc_register/registerindex.htm
[10] http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/con_doc_register/registerindex.htm

35. The Insolvency Service has continued to maintain its contact with parties interested in IVAs. In January 2007 The Insolvency Service and the British Bankers Association co-chaired a forum (hosted by KPMG) which attracted over 130 delegates including creditors, insolvency practitioners, debt advisors, academics and a variety of representative bodies.

36. Participants at the forum showed their continuing broad support for IVAs. However, they also reiterated that IVAs are unnecessarily complex and so are expensive to administer.

37. **The proposals in this document relating to the expansion of the IVA regime to accommodate a simplified version (SIVA) reflect the view of the majority of interested parties who responded to the working group report.**

CHAPTER 4: THE PROPOSALS

Introducing a simple alternative into the IVA regime (SIVA)

38. In 1986, the IVA regime was envisaged as a flexible alternative to bankruptcy. This alternative was specifically aimed at directors of companies, members of professions and traders.

39. Since the IVA regime was introduced it has not been substantially amended or augmented, except that since 1 January 2003[11], a debtor could obtain an IVA without first obtaining an interim order of the court and from 1 April 2004 fast track voluntary arrangements (FTVA) have been available, although only to those who are already bankrupt.

40. The working group report issued in July 2005, proposed that a simple alternative to IVAs would be well received by interested parties. Principal components of a simple IVA include: -

- The debtor having undisputed liabilities of less than £75,000,
- The use of 'voting by correspondence' (a paper meeting) to assess votes for and against the debtor's proposal,
- Creditors no longer being able to suggest modifications to the debtor's proposal,
- Approval of the proposal by a simple majority in value,
- Simpler reporting requirements,
- Not filing routine papers at court, and
- Creditors having to file their claims with the IP in 90 days or less.

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[11] http://www.opsi.gov.uk/si/si2002/20022712.htm

Amending voluntary arrangements so as to reduce the amount of papers filed at court.

41. When IVAs were first introduced in every case an application had to be made to the court to obtain an interim order. However, even in the case of those without an interim order, introduced by the Insolvency Act 2000, various papers are required to be placed on the court file. Similarly in an FTVA a number of routine papers are also placed on the (bankruptcy) court file. However the court file is used on only rare occasions, for example, when a creditor challenges the decision of the creditors' meeting under section 262 of the Insolvency Act 1986 or when there is an application to revoke an FTVA under section 263F of that Act.

42. We propose that in future there should be no routine filing of papers with the court. This would be achieved by replacing the current system with one which only applied where court intervention, following an application to it, was necessary. We propose that in the rare cases in which court intervention is required then the supervisor would be required to file in court all papers in his possession relevant to the application made to the court.

43. We intend to retain the current provisions that require the supervisor to notify the Secretary of State and creditors that a debtor's proposal has been approved. That information is used by The Insolvency Service to maintain a free public (and online) record of IVAs on the Individual Insolvency Register (IIR)[12].

44. This proposal will reduce the burden on IPs whose costs will as a consequence also be reduced, because they will no longer have to routinely file papers at court. This reduced cost will enable more of the debtor's contribution to the IVA to be distributed as dividends. The court system will also benefit, since it will no longer have to receive and retain in a file routine IVA papers. In 2006 there were 44,332 IVAs all of which generated a rarely used court file.

45. The reduction of administrative burdens is at the heart of The Insolvency Service's current consolidation project which will modernise and innovatively change the legislation, including providing for electronic access to insolvency information held by IPs and for the facility to use electronic transmission of documents in insolvency proceedings. The consolidation project is also aimed at simplifying and identifying and removing Rules that are no longer relevant or are duplicated, and removing unnecessary burdens on IPs. It will also look at the papers filed in court in other insolvency proceedings to see where they can be reduced.

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[12] http://www.insolvency.gov.uk/eiir/

Amending voluntary arrangements so as to provide for a revised reporting procedure

46. Currently the supervisor of an IVA or FTVA is required to produce a report annually, which must be sent to all the creditors (Rules 5.31 and 5.47 of the Insolvency Rules 1986). This creates a burden upon the supervisor (who may be an IP or Official Receiver) in requiring him to issue the reports which many creditors say they have little interest in receiving. This is particularly so in cases where the individual voluntary arrangement is progressing successfully and payments are being received as agreed.

47. We propose to amend the legislation relating to the voluntary arrangements (of individuals) to reduce this financial and administrative burden on the IP (and Official Receiver) and require reports to be produced only where there are factors that have, or will, affect the durability of the debtor's arrangement.

48. Reporting by exception will also reduce the administrative and financial burden on creditors, as they would in future only receive important or relevant information.

49. The Insolvency Service plans to reduce Administrative Burdens are set out in full in the proposals to amend voluntary arrangements to reduce the amount of papers filed at court.

Amending Section 389A of the Insolvency Act 1986 (Authorisation of nominees and supervisors)

50. At present only qualified IPs are licensed to act as the nominees and supervisors in IVAs. An IP is also qualified to act in other individual insolvency proceedings, for example as a trustee in bankruptcy. An IP can also act in corporate proceedings, as the nominee/supervisor in a company voluntary arrangement, as the administrator in the administration regime and similarly as an administrative receiver or liquidator.

51. The Insolvency Act 2000 recognised that there was scope for widening the group of persons who could deal with a voluntary arrangement either corporate or individual. It did this by inserting Section 389A into the Insolvency Act 1986 which allows an authorised person to act as nominee and/or supervisor in a voluntary arrangement, provided he is a member of a body recognised for that purpose by the Secretary of State and he has security regarding the performance of this function.

52. This has become more evident with the rise of certain non-statutory alternatives to the IVA. These are known as Debt Management Plans (DMP). In 2005 there were about 218,000[13] DMPs.

53. Although at present two bodies have indicated that they will seek recognition, the legislation is hard to understand. This is because section 389A of the Insolvency Act 1986 refers to 'voluntary arrangements', which encompass both company voluntary arrangements and individual voluntary arrangements. Some have interpreted this to mean they should have experience of both IVA and CVAs and that they are therefore unable to seek recognition to work exclusively, say, on IVAs. By enlarging the group who can provide IVAs (or CVAs), debtors (and companies) will have more choice and they will be less burdened in seeking assistance in their financial affairs.

54. Although the bodies can, by means of different educational and experience requirements, issue their members with personal and/or corporate voluntary arrangement authorisations, there currently appears to be little or no demand from individual applicants for corporate authorisations.

55. We propose to amend section 389A to make it clear that authorised bodies can seek authorisation to act in individual or company voluntary arrangements or both.

56. This proposal was not contained in the interested parties working group report '*Improving Individual Voluntary Arrangements*'. However the amendment has been mentioned at a variety of meetings with, and presentations to a wide range of interested parties and to date has met with general approval.

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[13] Taken from slides at the DFD Direct Conference on 9 November 2006.

Repealing the Deeds of Arrangement Act 1914

57. The Deeds of Arrangement Act 1914 (c.47) makes provision for a debtor to enter into an arrangement with his creditors as an alternative to bankruptcy. The Act imposes requirements for registration, for the appointment of trustees and compliance with other administrative procedures in order for an arrangement under the Act to be considered valid. Even when valid they do not bind all the debtor's creditors to the agreement so that any creditor may continue to pursue a debtor to bankruptcy in spite of the existence of theses arrangements.

58. The report of the Cork Committee in June 1982, whose purpose was to consider the detailed provisions of what became the Insolvency Act 1986, recommended that the Act be repealed on the grounds they were legally complex, unreliable in practice and therefore little used, even then. However it was not repealed at that time.

59. Since the introduction of IVAs by the Insolvency Act 1986 the use of the Deeds of Arrangement Act has declined drastically. In 1987 there were 31 such Deeds accepted and this has declined to none in 2004, 2005 and 2006.

60. Deeds of arrangement have therefore effectively fallen into disuse and have been superseded by the more popular statutory agreements provided for in the Insolvency Act 1986, or more informal agreements entered into by the debtor and his creditors (for example Debt Management Plans/Arrangements).

61. Therefore we propose to repeal the Deeds of Arrangement Act 1914 and all secondary legislation made under it and to make such consequential amendments so as to remove all references to that Act and to deeds of arrangement in other primary and secondary legislation.

62. **This proposal was not contained in the interested parties working group report '*Improving Individual Voluntary Arrangements'.* However, the possible repeal has been mentioned at a variety of meetings with, and presentations to, a wide range of interested parties and to date has been met with widespread approval.**

63. **Supplemental/Incidental/Transitional Provision**
Existing deeds of arrangement will be safeguarded by the use of transitional provisions and other savings provisions.

Restructuring and restatement of Part VIII of the Insolvency Act 1986

64. When the Insolvency Act was introduced in 1986 the provisions relating to the IVA regime were contained in Part VIII of the Act and consisted only of the interim order IVA, referred to above, and set out in sections 252 to 263 of the Act.

65. The Insolvency Act 2000 introduced non-interim order IVAs by inserting new section 256A, into the Insolvency Act 1986. It also inserted section 262A, the offence of False Representation (when obtaining an IVA) and section 262B relating to the prosecution of delinquent debtors. It also inserted section 262C, which provides the definition of 'Arrangements coming to an end prematurely'. Later the Enterprise Act 2002 introduced FTVAs by inserting a further 7 sections, 263A to 263G into the Insolvency Act 1986.

66. The changes effected since 1986 now mean that Part VIII contains 23 sections instead of the original 12. When SIVAs are introduced even more sections will need to be added and this is likely to result in unnecessary duplication of certain provisions and unwieldy cross-referencing. It is feared that this will make the legislation harder to understand than it already is.

67. Consequently it is intended to restructure and restate the provisions of Part VIII so to avoid the burdensome complexities that might otherwise result, without effecting any changes in the legislation other than those expressly referred to as being proposed in this document.

CHAPTER 5: LEGAL ANALYSIS AGAINST REQUIREMENTS OF THE LEGISLATIVE AND REGULATORY REFORM ACT

68 Legal burdens removed/reduced

PROPOSAL 1

Introducing a simple alternative into the IVA regime (SIVA)

69. Burden 1, introducing a simplified alternative to an IVA, entry to which will be limited to debtors who have undisputed debts of less than £75,000

70. This simpler alternative will reduce the administrative burden on an IP when dealing with a debtor's proposal and keep the financial cost of preparing the proposal down and it and will improve efficiency. It will enable a distinction to be made between simple IVAs and other IVAs, which will remain available to those debtors who owe creditors more than £75,000 and whose affairs are likely to be more complex. It was felt by members of the working group that levels of liabilities was a reasonable indicator of complexity.

71. The majority of current IVA cases would be suitable for a SIVA. Using the information contained in '*Living on Tick*'[14], it appears that more than 80% of the IVAs included in the research had liabilities of less than £75,000.

Other benefits

72. Currently, many IVAs concern cases where the debtor owes less than £75,000. A common complaint made by parties interested in IVAs is that they are expensive to administer. The expense flows from the cost of IP regulation, other factors such as holding a physical meeting of creditors and regularly filing reports with the court and creditors (see further below). This may be justified where the debts are large and complex. However, where the case is much less complex, as is the case where a debtor is paying in regular amounts from a salary, the creditors are not receiving as much of that money as they could because a significant proportion is taken up by the IP's administrative costs. By introducing simple IVAs it is anticipated that the administrative costs of the IP will be reduced which will generate larger dividends for creditors.

73. Burden 2, removing the requirement to convene a physical meeting of creditors to approve or reject a debtor's SIVA proposal.

74. Currently section 257 of the Insolvency Act 1986 requires that where the nominee is of the opinion that the IVA which the debtor is proposing has a

[14] http://www.pwc.com/extweb/pwcpublications.nsf/docid/6119F1915D59F13080257177005A23

reasonable prospect of being approved and implemented, the nominee is to summon a creditors' meeting. Section 258 sets out that a meeting summoned under section 257 is to decide (inter alia) whether to approve the proposed voluntary arrangement or amend or reject it.

75. The SIVA proposals will not require the summoning of a meeting of creditors. Instead the nominee, provided he is of the opinion that the voluntary arrangement which the debtor is proposing has a reasonable prospect of being approved and implemented, will issue a notice to creditors (including a copy of the debtor's proposal) inviting them to vote on whether to reject or approve the debtor's proposal, by a date that is not less than 14 days and not more than 28 days from the date of the notice.

76. This procedure of *'voting by correspondence'* already exists for FTVAs and is set out in rules 5.39 to 5.43 of the Insolvency Rules 1986.

77. Moving to voting by correspondence (including electronic correspondence) in a simplified IVA regime will: -

- Reduce the administrative burden on the IP who is acting as nominee, because he would no longer have to spend time arranging where the creditors' meeting should take place.

- Reduce the financial burden on the IP who is acting as nominee, as he would no longer have to pay for the hiring of a meeting room for the physical meeting of creditors' nor will he have to attend such a meetings. This will reduce the IP's costs and so benefit creditors, as more money paid into the IVA by the debtor will be available for distribution to the creditors.

Other benefits include
78. The debtor and creditors will no longer receive notice of a physical meeting, nor will they have to attend such a meeting and this will result in further costs savings to them.

79. **Burden 3, removing a creditor's right to propose modifications to a debtor's SIVA proposal**

80. All IVAs require the person who assists the debtor in drawing up his IVA proposal (usually the IP) to be of the view that the proposal has a reasonable prospect of being approved and implemented. Generally this includes providing creditors with a better dividend than would be available in bankruptcy. During this stage the IP is the nominee. If the creditors' meeting approves the debtor's IVA proposal, the IP is then appointed as supervisor (except in those rare cases where another IP is appointed supervisor).

81. Currently section 258 (2) of the Insolvency Act 1986 enables creditors to modify the debtor's IVA proposal at the creditors' meeting. A modification agreed by the creditors also has to be separately agreed to by the debtor. This can prove burdensome because it is time consuming and can be

inefficient since some creditors, although having in substance similar objections, may actually word them differently and they have to be resolved at the meeting. Also, modifications proposed by creditors may be trivial or heavy-handed and hence burdensome because they still have to be dealt with.

82. In some cases the modifications are debated at length before being agreed by the creditors and then put to the debtor. This can result in another meeting of creditors having to be held at a later date, which adds a further burden on the IP and further expense to the process and so reduces the potential dividend to be paid to the creditors.

83. The removal of the creditor's right in this regard will reduce the burden for: -

- The IP, who currently acts as the chairman of the meeting as he will no longer have to arrange for the modifications to be voted upon and this will also reduce the financial cost of providing a simple IVA.

- The IP will also save time and costs, as he will not have to deal with conflicting or unnecessary modifications before the creditors vote.

Other benefits include

84. A reduction in the IP's costs, which will mean more of the debtor's contributions paid into the IVA will be available for distribution to creditors.

85. Interested parties have already been consulted on this proposal and it has widespread support.

Best Practice

86. In parallel with the proposed SIVA regime there has been the promotion of Best Practice Models by a working group of interested parties.

87. **Burden 4, reduce the requisite majority (a procedural condition for approving a debtor's IVA proposal) of the creditors' vote to a simple majority in value.**

88. Currently Rule 5.23 of the Insolvency Rules 1986 sets out that 75% or more in value of those who vote at the creditors' meeting have to approve the IVA proposal before it becomes binding. The 75% limit can be a burden where one creditor is owed more than 25% of the total debts and accordingly, as a minority creditor, can block what the remaining creditors might consider to be an acceptable and viable IVA proposal. This is a particular problem where the debtor has a small number of creditors, (which is common where debts have been consolidated) because individual creditors exercise greater control over the voting process.

89. Moving to a reduced voting majority will reduce the administrative burden and provide cost savings for the IP acting as nominee since he and

his staff will spend less time contacting creditors to obtain their support. It will also simplify the process of voting.

90. The move is also likely to mean that creditors agree more IVAs because where burdens are reduced they are more likely to accept the proposals which are put forward to them.

91. **__Burden 5__, providing for reduced but more focused reporting to creditors by the use of exceptional as opposed to annual reports.**

92. Currently the IP as supervisor of an IVA is required to produce an annual report, which is sent to all the creditors (Rule 5.31 of the Insolvency Rules 1986). This creates a burden upon the IP since there may be little of creditor interest to report in any particular year. This is particularly true where the arrangement is progressing successfully and payments are being received as planned.

93. The SIVA regime will reduce that burden (and its associated cost) since the supervisor will be permitted to produce creditor reports only where there are factors that have affected, or may affect the durability of the debtor's SIVA.

94. Reporting by exception will reduce the administrative burden on, and reduce the costs in time and money to creditors who will receive only pertinent information.

95. **__Burden 6,__ in a SIVA the IP will not have to routinely file papers at court.**

96. When IVAs were first introduced in 1986 an application had to be made to the court for an interim order. The non-IO IVA introduced in 2003 also requires some reporting to the court e.g. the result of the creditors' meeting must be filed. However the court rarely needs to refer to the file pertaining to the IVA proceedings. In practice, it is only used on those rare occasions such as when a creditor challenges the decision of the creditors' meeting under section 262 of the Insolvency Act 1986. Courts will also recall the file should a bankruptcy petition be subsequently presented against the debtor and for annulment of the bankruptcy order if the IVA was obtained post bankruptcy.

97. We propose that in SIVAs there will be no routine filing of papers with the court. This would be achieved by replacing that system with one which only applies where a person applies to the court in specified circumstances, which would include cases in which a creditor challenged a decision of a creditors meeting. We propose that if such an application were made, the relevant supervisor would be required to file in court those papers which would have otherwise been routinely filed, if they were relevant to the application. Those papers would be sent to the court in time to determine the application.

98. This proposal will reduce the burden and costs to IPs, as they will no longer have the expense of routinely filing papers at court.

Other benefits

99. The court system will also benefit, because it will no longer have to receive and retain a file of IVA papers. In 2006 there were 44,332 IVAs all of which generated a rarely used court file. The Department for Constitutional Affairs (DCA) is content with this proposal.

100. It will also speed up the process by removing an unnecessary stage in the processing of the proposal. This will benefit IPs, creditors, and the debtor as the SIVA will be approved (or rejected) more quickly which should save IPs time and so generate better dividends for creditors.

101. IPs are already required to notify certain details of all approved IVA proposals to The Insolvency Service, which will continue to display them on the Individual Insolvency Register (IIR). To include SIVAs will not place any additional burden on IPs or The Insolvency Service relating to the provision of information for and publication on the IIR.

102. **Interested parties have already been consulted on this proposal and it has widespread support.**

103. Removing requirements to file routine papers in the court is also the subject of Cabinet Office proposals for reducing 'Administrative Burdens' and many (if not all) requirements to file papers have already been externally identified as being a way of reducing administrative burdens.

<u>Burden 7</u>, imposing a time limit of 90 days for creditors to file a claim with the IP in relation to a SIVA.

104. We propose that the SIVA regime will impose a 90-day deadline for creditors to file their claim with the IP. Currently many IPs delay distributing dividends to creditors because of uncertainty about the emergence of further claimants and this affects the level of distributions.

105. This proposal will reduce the burden on the IP, who after the expiry of the 90-day period, will no longer have to monitor or take into account outstanding claims from creditors who have not lodged their proof of debt within that period thus enabling him, where appropriate, to commence distributing dividends to creditors at an earlier date.

106. Although it will place a burden on the small number of creditors who do not already promptly file their claims it will also be offset by some benefits for the majority of creditors who file claims in a timely manner as they can expect speedier access to dividends.

OBSTACLE TO PROFITABILITY – Burdens 1 to 7

107. The SIVA regime is intended to be a cheaper, quicker and more effective way for qualifying debtors to deal with their debts than the current IVA. Consequently less of the debtor's financial contributions will be used by the IP to cover their administrative costs and more of the debtor's monthly payments can be paid as dividends to creditors.

PROPOSAL 2

Amending voluntary arrangements so as to reduce the amount of papers filed at court

108. **<u>Burden 1,</u> removing the requirement to routinely file papers at court in voluntary arrangements.**

109. Burden 6 of proposal 1 (paragraph 95) sets out that in a SIVA the IP will not have the burden of routinely filing papers at court. We propose to extend this practice to IVAs and FTVAs other than interim order IVAs because the court will already be involved in the latter type of IVA since an application must be made to the court for an interim order in any event.

110. Examples of papers that are filed at court include:

- the result of a creditors meeting in a non IO IVA and
- the supervisor's annual report (of income and expenditure) in non IO IVAs and FTVAs

111. We propose to replace the existing requirements on filing papers with one which only applies where a creditor wishes to otherwise apply to the court in specified circumstances. We propose that if such an application were made, a supervisor would have to file in court those papers he previously routinely filed and that those papers should be sent to the court in time to determine any application made to it.

112. As noted above this proposal also reflects the Cabinet Office suggestions for reducing Administrative Burdens.

PROPOSAL 3

Amending voluntary arrangements so as to provide for a revised reporting procedure

113. **__Burden 1__, providing for reduced but more focused reporting to creditors by the use of exceptional as opposed to annual reports.**

114. Burden 5 in proposal 1 (paragraph 91) mentions the intention for reduced but more focused reporting in SIVAs. Currently the IP as supervisor of an IVA and the Official Receiver as the supervisor of an FTVA are also required to produce an annual report, which is sent to all the creditors (Rules 5.31 and 5.47 of the Insolvency Rules 1986). This creates a burden upon the IP and Official Receiver to issue the reports simply as a matter of routine and not because anything of interest is to be reported. Some creditors have advised that usually they take little interest in such reports because of their routine nature. This is particularly true of reports on arrangements which are progressing successfully and because payments are being received as planned.

115. We propose that the voluntary arrangement alternatives are amended to reduce the burden (and financial costs) on the IP (and Official Receiver) and enable reports to be produced only where there are factors that have affected, or may, affect the durability of the debtor's arrangement.

116. Reporting by exception will reduce the administrative burden on, and reduce the costs in time and to creditors who will receive only pertinent information.

117. This proposal reflects the Cabinet Office suggestions for reducing Administrative Burdens.

PROPOSAL 4

Amending Section 389A of the Insolvency Act 1986 (Authorisation of nominees and supervisors)

118. Section 389A was inserted into the Insolvency Act 1986 by the Insolvency Act 2000 (c.39). It allows an authorised person to act as nominee and supervisor in a voluntary arrangement provided:

- he is a member of a body recognised for that purpose by the Secretary of State, and

- he has security regarding the performance of this function.

119. At present only IPs are licensed to act as nominees and supervisors in IVAs. An IP is also licensed to act in other individual insolvency proceedings, for example as a trustee in bankruptcy. An IP is also licensed to act in corporate proceedings and is eligible to act as the nominee/supervisor in a company voluntary arrangement, as the administrator in the administration regime and similarly as an administrative receiver or liquidator.

120. The Insolvency Act 2000 recognised that there are persons who are not licensed to act as IPs but who may wish to act only in voluntary arrangements and inserted section 389A into the Insolvency Act 1986.

121. At present two bodies have sought recognition under S389A. It has been commented upon that section 389A is not wholly clear because it refers to ‘voluntary arrangements’, which encompass both company voluntary arrangements and individual voluntary arrangements. Therefore, under the existing legislation applicant bodies have to demonstrate to the Secretary of State that they will maintain and enforce rules for ensuring that their members can undertake both company voluntary arrangements and individual voluntary arrangements. Although the bodies can, by means of different educational and experience requirements, issue their members with personal and/or corporate voluntary arrangement authorisations, there appears to be little or no demand from applicants for corporate authorisations.

122. The proposal would reduce the burden on bodies seeking authorisation as they would only need to demonstrate that their body had rules ensuring its members ‘meet acceptable requirements as to education and practical training and experience’ in either company or individual voluntary arrangements.

PROPOSAL 5

Repealing the Deeds of Arrangement Act 1914 (c.47).

123. With the introduction of the IVA regime in 1986 and the rise in the number of Debt Management Plans, Deeds of Arrangement have become outmoded and consequently they no longer need to remain on the statute book. We recommend that the Deeds of Arrangement Act 1914 and associated legislation be repealed**.**

124. The Deeds of Arrangement Act 1914 (c.47) makes provision for a debtor to enter into an arrangement with his creditors as an alternative to bankruptcy. The Act sets out the requirements for registration, for the appointment trustees and compliance with other administrative procedures in order for an arrangement under the Act to be considered valid. Even when valid, they do not bind all the debtor's creditors to the agreement so that any creditor may continue to pursue a debtor to bankruptcy in spite of the existence of the arrangement.

125. The report of the Cork Committee in June 1982, whose purpose was to consider the detailed provisions of what became the Insolvency Act 1986, recommended that the Act be repealed on the grounds that deeds of arrangement were legally complex, unreliable in practice and therefore were little used even then, however it was not repealed at that time.

126. Since the introduction of IVAs by the Insolvency Act 1986 the use of the Deeds of Arrangement Act has declined dramatically. In 1987 there were 31 Deeds and 404 IVAs. Between 2004 and 2006 there have been no new deeds. In contrast in 2004 there were 10,752 IVAs, in 2005 there were 20,293 and in 2006 there were 44,332.

127. Therefore we propose to repeal the Deeds of Arrangement Act 1914 and all secondary legislation made under it; and to make such consequential amendments so as to remove all references to that Act and to deeds of arrangement in other primary and secondary legislation.

128. **Although there has been no formal consultation on the repeal of the Deeds of Arrangement Act 1914, the possibility of its repeal has already been raised with IPs, their regulatory bodies and other interested parties and the proposal has received their general support.**

PROPOSAL 6

Restructuring and restatement of Part VIII of the Insolvency Act 1986

129. When the Insolvency Act was introduced in 1986 the provisions relating to the IVA regime were contained in Part VIII of the Act and consisted only of the interim order IVAs referred to above and set out in sections, 252 to 263 of the Act.

130. The Insolvency Act 2000 introduced non-interim order IVAs by inserting new section 256A, into the Insolvency Act 1986. It also added sections 262A, 262B and 262C into the Insolvency Act 1986. Section 262A sets out the offence of '*False representations etc.'* Section 262B deals with the '*Prosecution of delinquent debtors etc*'. Section 262C deals with '*Arrangements coming to an end prematurely'.* Later, the Enterprise Act 2002 introduced FTVAs by inserting sections 263A to 263G into the Insolvency Act 1986.

131. The changes effected since 1986 mean that Part VIII now contains 23 sections instead of the original 12. When SIVAs are introduced even more sections will be added and this is now likely to result in unnecessary duplication of certain provisions and unwieldy cross-referencing. It is feared that this will make the legislation harder to understand than it already is.

132. Consequently it is intended to restructure and restate the provisions of Part VIII so to avoid the burdensome complexities that might otherwise result, without effecting any changes in the legislation other than those expressly referred to as being proposed in this document.

ANNEX A: LIST OF CONSULTEES

Abbey
Aberdeen University
ACCA
Access Europe
Accuma
Advice UK
Affinity Limited
Agnello, Raquel
Alliance and Leicester
APACS
Ashford, C
Baines and Ernst
Baister, Mr Registrar
Bank of England
Bank of Scotland
Bankruptcy Advisory Service
Barclaycard
British Bankers Association
Behrens, H H Judge
Blair Endersby
Budsworth and Co
Bullock, District Judge
Cambridge University
Capital Insolvency Services
Capital One
Capquest
Cattles plc
CBA
CBI
Compliance on Call
Home Office
HSBC
HWCA
ICA in Ireland
ICA in Scotland
ICAEW
Ideal CS
Institute of Credit Management
Insolvency Lawyers Association
Institute of Directors
Institute of Revenues Rating and Valuation
IPA
IPC
Islamic Bank of Britain
Jacques, Mr. Registrar
Jones, Michael
Kingston, University of
Kluwer law
Koark, Anne
KPMG
Law Society
Legal Services Commission
Lines Henry
Lloyds TSB
Manchester University
Max Recovery
MBNA
McCambridge Duffy
MJ Bushell and Co
Money Advice Trust

Consumer Credit Association
CCCS
CCUA
CFS
Chiltern UK
Churchwood Financial
Citizens Advice
Cleardebt
Clearstart
CML
Co-op Bank plc
Credit Services Association
Davis, Glen
Debt Matters
Dept for Constitutional Affairs
DETINI
Debt Free Direct Group plc
DRO Intermediaries Working Group
Department of Trade and Industry
Egg plc
Eversheds
Experian
Finance and Leasing Association
Forum of Private Business
Frampton, G R
Freeman Jones
Freshfields
Financial Services Authority
Gemstone Financial Management Ltd
Geoffrey Parker Bourne Sols
Green and Co
Gregory Pennington
National Australia Group Europe Ltd
National Consumer Council
National Debtline
Nationwide Building Society
Northern Rock
Nottingham Trent University
Nottingham, Peter
OFT
One Advice
Oxford University
Payplan
Pennie, JA
PKF
Prodant
PWC
R3
RBS
Richards, Mr Justice David
Salford City Council Debt Advice
SBS
Scottish Executive
Snowden, Richard
South Square
Society of Turnaround Practitioners
Student Loans Company
TIX
TDX
The Commission Racial Equality
The Debt People
The Law Commission
Think Money
Toronto University

Grant Thornton UK

Halifax Building Society

Halliwells

HBOS

HFC

HMRC

Hodgsons

Holland & Co

Trower, W S P

University College London

Vantis Numerica

Varden Nuttall

W3 Debt Solutions

Wales, University of

Wilson Phillips

ANNEX C: LEGISLATIVE REFORM ORDERS- PARLIAMENTARY CONSIDERATION

Introduction

1. These reform proposals in relation to individual insolvency will require changes to primary legislation in order to give effect to them. The Minister could achieve these changes by introducing a Legislative Reform Order (LRO) under the Legislative and Regulatory Reform Act 2006 (LRRA). LROs are subject to preliminary consultation and to rigorous Parliamentary scrutiny by Committees in each House of Parliament. On that basis, the Minister invites comments on these reform proposals in relation to individual insolvency as measures that might be carried forward by a LRO.

Legislative Reform Proposals

2. This consultation document on individual Insolvency has been produced because the starting point for LRO proposals is thorough and effective consultation with interested parties. In undertaking this preliminary consultation, the Minister is expected to seek out actively the views of those concerned, including those who may be adversely affected, and then to demonstrate to the Scrutiny Committees that he or she has addressed those concerns.

3. Following the consultation exercise, when the Minister lays proposals before Parliament under the section 14 Legislative and Regulatory Reform Act 2006, he or she must lay before Parliament an Explanatory Document which must:

- i) Explain under which power or powers in the LRRA the provisions contained in the order are being made;
- ii) Introduce and give reasons for the provisions in the Order;
- iii) Explain why the Minister considers that:
    - There is no non-legislative solutions which will satisfactorily remedy the difficulty which the provisions of the LRO are intended to address;
    - The effect of the provisions are proportionate to the policy objective;
    - The provisions made in the order strikes a fair balance between the public interest and the interests of any person adversely affected by it;
    - The provisions do not remove any necessary protection;
    - The provisions do not prevent anyone from continuing to exercise any right or freedom which they might reasonably expect to continue to exercise;

- The provisions in the proposal are not constitutionally significant; and
- Where the proposals will restate an enactment, it makes the law more accessible or more easily understood.

iv) Include, so far as appropriate, an assessment of the extent to which the provision made by the order would remove or reduce any burden or burdens;

v) Identify and give reasons for any functions of legislating conferred by the order and the procedural requirements attaching to the exercise of those functions; and

vi) Give details of any consultation undertaken, any representations received as a result of the consultation and the changes (if any) made as a result of those representations.

4. On the day the Minister lays the proposals and explanatory document, the period for Parliamentary consideration begins. This lasts 40 days under negative and resolution procedure and affirmative resolution procedure and 60 days under super-affirmative resolution procedure. If you want a copy of the proposals and the Minister's explanatory document laid before Parliament, you will be able to get them either from the Government department concerned or by visiting the Cabinet Office's website at http://www.cabinetoffice.gov.uk/regulation/regulatory_reform/act/reform_orders.asp

Parliamentary Scrutiny

5. Both Houses of Parliament scrutinise legislative reform proposals and draft LROs. This is done by the Regulatory Reform Committee in the House of Commons and the Delegated Powers and Regulatory Reform Committee in the House of Lords.

6. Standing Orders for the Regulatory Reform Committee iin the Commons stipulate that the Committee considers whether proposals:

(a) appear to make an inappropriate use of delegated legislation;

(b) serve the purpose of removing or reducing a burden, or the overall burdens, resulting directly or indirectly for any person from any legislation (in respect of a draft Order under section 1 of the Act);

(c) serve the purpose of securing that regulatory functions are exercised so as to comply with the regulatory principles, as set out in section 2(3) of the Act (in respect of a draft Order under section 2 of the Act);

(d) secure a policy objective which could not be satisfactorily secured by non-legislative means;

(e) have an effect which is proportionate to the policy objective;

(f) strike a fair balance between the public interest and the interests of any person adversely affected by it;

(g) do not remove any necessary protection;

(h) do not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise;

(i) are not of constitutional significance;

(j) make the law more accessible or more easily understood (in the case of provisions restating enactments);

(k) have been the subject of, and takes appropriate account of, adequate consultation;

(1) give rise to an issue under such criteria for consideration of statutory instruments laid down in paragraph (1) of Standing Order No 151 (Statutory Instruments (Joint Committee)) as are relevant;

(m) appear to be incompatible with any obligation resulting from membership of the European Union;

7. The Committee in the House of Lords will consider each proposal in terms of similar criteria, although these are not laid down in Standing Orders.

8. Each Committee might take oral or written evidence to help it decide these matters, and each Committee would then be expected to report.

9. Copies of Committee Reports, as Parliamentary papers, can be obtained through HMSO. They are also made available on the Parliament website at

- Regulatory Reform Committee in the Commons; and
- Delegated Powers and Regulatory Reform Committee in the Lords.

10. Under negative resolution procedure, each of the Scrutiny Committees is given 40 days to scrutinise an order, after which the Minister can make the order if neither House of Parliament has resolved during that period that the order should not be made.

11. Under affirmative resolution procedure, each of the Scrutiny Committees is given 40 days to scrutinise an order, after which the Minister can make the order if it is approved by a resolution of each House of Parliament.

12. Under super-affirmative procedure each of the Scrutiny Committees is given 60 days to scrutinise the order. If, after the 60 day period, the Minister wishes to make the order with no changes, he may do so only if it is approved by a resolution of each House of Parliament. If the Minister wishes to make changes to the draft order he must lay the revised order and a statement giving details of any representations made during the scrutiny period and of the proposed revisions to the order, before Parliament. The Minister may only make the order if it is approved by a resolution of each House of Parliament.

How to Make Your Views Known

13. Responding to this consultation document is your first and main opportunity to make your views known to the relevant department as part of the consultation process. You should send your views to the person named in the consultation document (in this case Andy Woodhead). When the Minister lays proposals before Parliament you are welcome to put your views before either or both of the Scrutiny Committees.

14. In the first instance, this should be in writing. The Committees will normally decide on the basis of written submissions whether to take oral evidence.

15. Your submission should be as concise as possible, and should focus on one or more of the criteria listed in paragraph 6 above.

16. The Scrutiny Committees appointed to scrutinise Legislative Reform Orders can be contacted at:

Delegated Powers and
Regulatory Reform Committee
House of Lords
London
SW1A 0PW
Tel: 0207 219 3103
Fax: 0207 219 2571
mailto: DPDC@parliament.uk

Regulatory Reform Committee
House of Commons
7 Millbank
London
SW1P 3JA
Tel: 020 7219 2830/2833/2837
Fax: 020 7219 2509
mailto: regrefcom@parliament.uk

Non-disclosure of responses

17. Section 14(3) of the LRRA provides what should happen when someone responding to the consultation exercise on a proposed LRO requests that their response should not be disclosed.

18. The name of the person who has made representations will always be disclosed to Parliament. If you ask for your representation not to be disclosed, the Minister should not disclose the content of that representation without your express consent and, if the representation relates to a third party, their consent too. Alternatively, the Minister may disclose the content of the representation in such a way as to preserve your anonymity and that of any third party involved.

Information about Third Parties
19. If you give information about a third party which the Minister believes may be damaging to the interests of that third party, the Minister does not have to pass on such information to Parliament if he does not believe it is true or he is unable to obtain the consent of the third party to disclosure. This applies whether or not you ask for your representation not to be disclosed.

20. The Scrutiny Committees may, however, be given access on request to all representations as originally submitted, as a safeguard against improper influence being brought to bear on Ministers in their formulation of legislative reform orders.

ANNEX D: CONSULTATION CRITERIA

The criteria in the Code of Practice on Written Consultations published by the Cabinet Office apply to all UK national public consultations.

Though they have no legal force, and cannot prevail over statutory or other mandatory or external requirements (e.g. under European Community law) they should otherwise generally be regarded as binding on UK Departments and their agencies unless Ministers conclude that exceptional circumstances require a departure.

The criteria should be reproduced in consultation documents with an explanation of any departure, and confirmation that they have otherwise been followed.

1. Timing of consultation should be built into the planning process for a policy (including legislation) or service from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left for it at each stage.

2. It should be clear who is being consulted, about what questions, in what timescale and for what purpose.

3. A consultation document should be as simple and concise as possible. It should include a summary, in two pages at most, of the main questions it seeks views on. It should make it as easy as possible for readers to respond, make contact or complain.

4. Documents should be made widely available, with the fullest use of electronic means (though not to the exclusion of others), and effectively drawn to the attention of all interested groups and individuals.

5. Sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation.

6. Responses should be carefully and open-mindedly analysed, and reasons for decisions finally taken.

7. Designating a consultation co-ordinator who will ensure the lessons are disseminated.

Any complaints regarding this consultation can be sent to the consultation co-ordinator, Simon Towler/Nick Cooper, Department of Trade and Industry, 1 Victoria Street, London SW1H 0ET.

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ANNEX E: REGULATORY IMPACT ASSESSMENTS

SIMPLIFIED INDIVIDUAL VOLUNTARY ARRANGEMENTS – DRAFT RIA

1. Title of proposal

Simplified Individual Voluntary Arrangements, for the remainder of this document are referred to as SIVAs and although that term has been in general usage during the consultation process, it may be the revised scheme has a different title.

2. Purpose and intended effect of measure

(i) The objective

The proposal is to improve the existing legislation and practice in the area of Individual Voluntary Arrangements (IVAs), a statutory regime set out in part VIII of the Insolvency Act 1986. IVAs provide indebted individuals with a legally binding agreement with their creditors for the repayment of their debts in part or in full. The proposal will affect the three principal interested parties in IVAs; the debtor, the creditor and the provider (the nominee or supervisor of an IVA who must at present be a licensed insolvency practitioner). Debtors can expect to benefit from easier access to a straightforward and transparent regime with reduced entry and administration costs. Creditors can expect to benefit from the increased dividends that will follow from those lower costs, resulting in more of the debtor's contributions being made available for distribution.

(ii) Devolution

The individual insolvency provisions of the Insolvency Act 1986 apply only to England and Wales.

(iii) The background

IVAs were introduced by the Insolvency Act 1986 as an alternative to bankruptcy. Prior to their introduction the only alternative was a deed of arrangement under the Deeds of Arrangement Act 1914, however these were not binding on creditors and could be undone by a single creditor taking enforcement action. On the introduction of IVAs in 1986, in every case an Interim Order (which provides a moratorium against legal action) had to be obtained from the court. IVAs were envisaged as a rescue and rehabilitation process for 'business generated' personal insolvency such as encountered by professionals, traders and company directors. On 1 January 2003 the Insolvency Act 2000 introduced IVAs without an Interim Order. This reflected a move away from 'business generated' personal insolvency and non Interim Order IVAs form the vast majority of current IVAs. This change is linked to the change in the credit market since 1986 and the fact that many consumers are using IVAs to resolve their debt problems. A moratorium is no longer required and the procedure is consequently cheaper as there is less court involvement.

The PriceWaterhouseCoopers report '*Living on Tick, the 21st century debtor*'

confirms the changing profile of debtors:

"*The profile of the typical debtor is changing. No longer is he a 45 year old builder or shopkeeper with tax bills, but is more likely to be someone in their twenties or thirties, of either gender, with credit card and personal loan debts of £40,000. That person is likely to be unskilled, earning less than £30,000 pa and living in rented accommodation*"

In view of the changing profile of the typical IVA user, various interested parties have suggested that the shortcomings with the current IVA process have led to many consumer debtors seeking to resolve their debt problems by alternative, and possibly less appropriate, means.

Against that background The Insolvency Service commissioned Michael Green, a Research Fellow of the University of Wales, to carry out research into IVAs, over-indebtedness and the insolvency regime[15]. Michael Green's research, at paragraph 123, concludes that:

' From a practical and mechanistic standpoint it is suggested that the way forward will be best served by creating a framework for a régime which deliberately and purposely sets out to deal with the present deficiencies as a whole - process, market, regulatory, behaviour et al. It should simultaneously address those philosophical issues…which are presently outstanding and are a barrier to any effective progress.'

That research led to The Insolvency Service hosting a forum for interested parties on 19 July 2004. The notes[16] from that forum concluded that: -

- IVAs can and do work for insolvent traders but they could be modified so that they more closely meet the needs of non-traders (also commonly referred to as "consumer debtors").
- The content of an IVA proposal should be simplified, as their current complexity deterred some potential users who would benefit from entering such an arrangement.
- To simplify an IVA, consideration should be given to removing a creditor's ability to propose modifications to a debtor's proposal.
- As the IVA is a regulated process this provides creditors with confidence in the professional standards of the supervisor.
- The cost of an IVA, including the supervisor's fees can act as a barrier

15 http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/policychange/ivapolicyresearch/shortformreport.doc

16 http://www.insolvency.gov.uk/whatsnew/forumnotes.doc

to entry.

- The research also identifies that once a provider's costs reach a certain level they remain relatively static, for example a provider's median costs for cases with debts in the range from £30,000 to £149,999 were £6,475.

The forum led to the formation of an IVA Working Group to examine how they might be improved. The findings and recommendations of the Working Group are detailed in The Insolvency Service report '*Improving Individual Voluntary Arrangements*'[17].

(iv) Rationale for Government intervention

When IVAs were introduced in 1986 they were aimed at providing a rescue mechanism for over-indebted businessmen/entrepreneurs. Since their introduction the availability of credit has significantly increased. This has taken place during a period of low inflation, low interest rates, low unemployment and increasing household wealth. Credit is seen as an important element in the overall economy and used sensibly it can stimulate growth.

The Insolvency Service consultation document '*Relief for the Indebted - An alternative to Bankruptcy*'[18] includes a table of reasons for arrears on household bills and credit commitments (source: Kempson[19] 2002), identified as follows:

Reason	Percentage
Redundancy	18
Relationship breakdown	6
Sickness or disability	6
Other loss of income	12
Low income	15
Over commitment	9
Increased/unexpected expenses	11
Overlooked or withheld payment	12
Third party error	6
Debts left by a former partner	2
Other reason	3

17

http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/con_doc_register/improvingIVAs.pdf

18 http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/con_doc_register/consultationpaperwithnewannex1.pdf

19 http://www.insolvency.gov.uk/information/con_doc_register/registerindex.htm

This research has been augmented by the PriceWaterhouseCoopers report '*Living on Tick, the 21st century debtor*' which indicates that

"*There is no doubting that debtors live beyond their means, but financial catastrophe is usually expected to arrive when an event shows that an individual had not provided for a rainy day, and a high level of debt becomes unmanageable. The picture drawn by the results indicates that simply living beyond one's means may be enough, eventually, to force the individual to seek a financial settlement with his creditors"*

The Financial Services Authority in its Financial Risk Outlook for 2005[20] indicates that: -

"*A further third (of all households) say they were keeping up with all of their commitments, but struggled from time to time. Around one in eight families with an unsecured debt find it a constant struggle or are falling behind with their borrowing commitments. These results are broadly comparable with the Department of Trade and Industry's 2002 survey of over-indebtedness"*.

It goes on to set out that:

"Citizens Advice Bureaux have seen a 44% increase in new consumer debt enquiries in the last six years and now deal with over 700,000 new consumer debt enquiries annually. Calls to the Consumer Credit Counselling Service help lines rose by more than a third to 90,000 in the first six months of 2004, and there was a significant increase in calls over the Christmas period compared to 2003."

The Bank of England Quarterly Bulletin (Winter 2004) refers to a survey into unsecured and mortgage borrowing that it commissioned. The survey identified that "*around 25% of those remortgaging in the past year"* [21] have done so to consolidate their debts.

There are a number of individuals who need access to a debt resolution process that is clear, accessible, affordable and appropriate to their circumstances. Although the IVA regime is a useful debt resolution process it needs to be updated to promote clarity, affordability and ensure that creditors receive a fair return.

IVAs were originally intended to deal mainly with business-generated debt. For other users they can be seen as over complicated and relatively difficult to access, especially for those with debts of less than £25,000. To meet the need of domestic credit users, a non-statutory process of debt resolution called a Debt Management Plan (DMP) has arisen.

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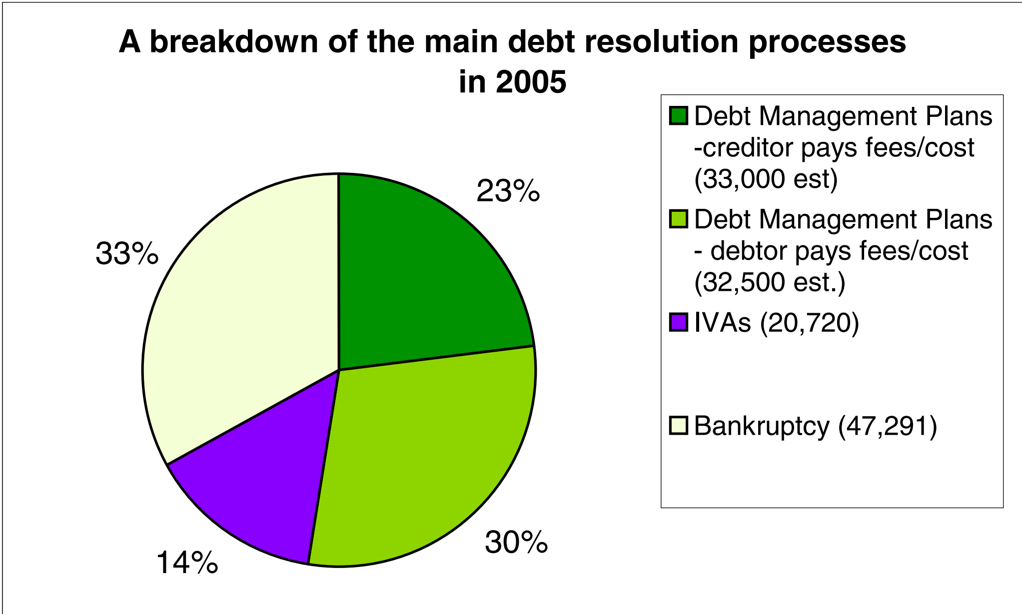
[20] www.fsa.gov.uk/pubs/plan/financial risk outlook 2005

[21] http://www.bankofengland.co.uk/qb/qb0404.pdf

As there is no debt forgiveness in a DMP, the debts have to be repaid in full and this can mean some last for more than ten years. This is in contrast to an IVA where in effect the creditors vote on whether or not to agree to some debt forgiveness. As repayments under a DMP can continue almost indefinitely they can deny a debtor full access to credit for a significant period of time which may not help his rehabilitation

Our research has enabled us to prepare the chart below which sets out the main debt resolution processes (and their numbers) for the calendar year 2005.



If a SIVA regime were introduced a number of those who currently opt for a DMP are more likely to choose a SIVA for the reasons given above. The SIVA regime would address one of the concerns raised by Michael Green in his research, namely that the current IVA regime *'can and does lead to IVAs being rejected that should be accepted and valid proposals being rejected at an early stage'*

<u>3. Consultation</u>

(i) Within Government

The Insolvency Service commissioned an independent Working Group to examine the individual voluntary arrangement (IVA) process. In July 2005 their report, '*Improving Individual Voluntary Arrangements'*, was issued summarising the Working Group's findings and conclusions. The report, which included a partial Regulatory Impact Assessment, invited responses from interested parties from within Government and the consultation exercise closed in October 2005.

(ii) Public consultation

The Working Group operated under a frame of reference provided by Gerry Sutcliffe, the then Minister for Employment Relations and Consumer Affairs:

> '*To consider the need for both legislative and non-legislative reform of the current individual voluntary arrangement process in order that it meets the needs of all individual debtors and their creditors, to make necessary recommendations for change and to report its findings*'

The Working Group met on five occasions and full details of their Report are included earlier in the document. The role of the Working Group has been referred to in a number of seminars and conferences at which The Insolvency Service has participated.

Improving Individual Voluntary Arrangements was e-mailed to approximately 350 interested parties comprising a wide range of individuals and organisations. The report was also made available (and remains) on The Insolvency Service's website. Some 40 interested parties requested and were sent hard copies of the report.

In March 2006, The Insolvency Service issued a report summarising the responses to the consultation document and the government's reply[22]. Since the formal consultation period ended, The Insolvency Service has continued to meet with a variety of organisations, including some of the Recognised Professional Bodies of insolvency practitioners, and there has been one further meeting of the Working Group.

In January 2007 there was a forum of 130 interested parties which was co-hosted by the British Bankers Association and The Insolvency Service and the forum generally accepted that a further strand of IVAs would greatly assist debtors with relatively simple affairs.

4. Options

Option 1: Do nothing

This would continue to deny a substantial number of debtors access to a means of rehabilitation appropriate to their needs. If SIVAs are not introduced they may be faced with alternatives that are less appropriate in many cases (for example debt consolidation, re-mortgage, DMP or bankruptcy).

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[22] http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/con_doc_register/improvingIVAsgovtresponse.pdf

Option 2: Improve access to IVAs through a code of best (industry wide) practice.

'Improving Individual Voluntary Arrangements' sets out a number of ways that improvements to the IVA regime could be achieved without a change in legislation. However, best practice alone is not expected to provide better access to an IVA for debtors' with lower-level debts, as it appears that much of their current complexity and associated cost comes from the way the legislation is framed and how the industry complies with those legislative requirements. The Working Group set up to review the IVA regime, many of whom have considerable practical experience, believe that legislative change is required.

Option 3: Leave the current IVA regime in place for the use of traders and those with more complex affairs. Implement option 2 and additionally introduce a simple version of the IVA regime that is aimed at providing access for those with lower level of debts and whose affairs are relatively simple.

This would allow debtors, particularly those with relatively low levels of debt, access to an affordable (lower cost) debt resolution process that provides financial rehabilitation. Other benefits include the provision of a licensed and regulated supervisor who creditors can rely on to obtain the best repayment deal possible.

5. Costs and Benefits

Business sectors affected

Recently a number of banks have increased their bad debt provision to take account of rising insolvency numbers. We think that if option 3 were to be introduced, the banking and credit card sector would be able to reduce their costs as they would have less work to carry out in looking at IVA proposals and proposing or dealing with modifications.

The improved IVA regime would continue to use licensed insolvency practitioners who are regulated by their professional bodies or the Secretary of State (as at 1 January 2006 there were 1,688 licensed practitioners). The Working Group recognizes that the new SIVA and existing IVA regime will not suit the requirements of all types of debtors and there will still be a number of debtors who will want to arrange a DMP or use another alternative. In addition to those who want to use another method, there will be those who will be unable to access the scheme – it is not a cure for everyone's debt problems.

Issues of equity and fairness

It could be argued that people who get into debt should repay their debts in full and the creditors should not provide any debt forgiveness. However, IVAs

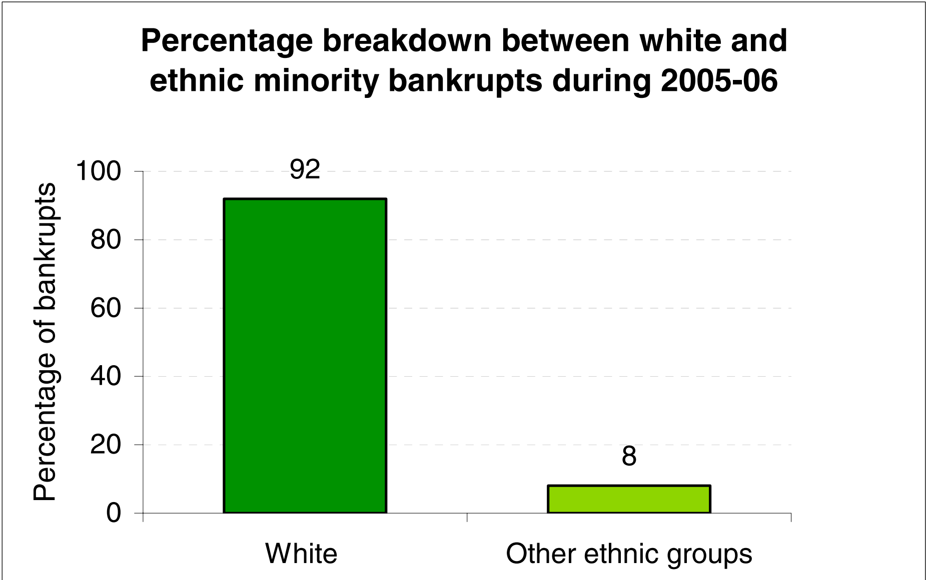
and bankruptcy already provide some debt forgiveness and the revised regime is aimed at people who are in financial difficulty generally as a result of living beyond their means and/or a life accident. Generally IVA debtors would be required to repay a proportion of their debts out of their disposable income for a minimum of five years and so would have endured some financial restraint for a significant period.

It is generally accepted that if a debtor proposes an IVA, it will generate better dividends compared with bankruptcy. Although creditors will not usually be repaid in full, by providing the debtor with access to a more appropriate debt resolution scheme, it is also expected that the debtor would learn from their experience of the discipline required to successfully complete a SIVA and use credit more responsibly with a consequent reduction in the risk to finance providers.

Social Impacts – Racial Equality Impact Assessment

It is not considered that the introduction of the SIVA regime will have any race equality impacts as it is aimed at all groups who fall within the criteria for entry. This will be set in terms of a maximum level of debt and should not therefore be determined by any other factors.

To enable The Insolvency Service to assess the impact of its policies and processes on bankrupts from different ethnic groups an exercise has been undertaken to monitor their ethnicity. During the year 2005-06 the ethnicity of 45,495 bankrupts was obtained[23]. The split between ethnic groups among bankrupts is shown below:



This compares very closely with the overall population as shown in the last census figures for 2001 at 91.8% and 7.9% respectively[24] . It is expected that

[23] http://www.insolvency.gov.uk/pdfs/annual2005-06web.pdf

[24] http://www.statistics.gov.uk/cci/nugget.asp?id=273

a similar pattern would be shown for IVAs and SIVAs although no comparable data for IVAs is presently available.

However, data held by The Insolvency Service indicates that ethnic minority bankrupts are less likely to present their own bankruptcy petition (65% of ethnic minority bankrupts present a debtor's petition when compared to white bankrupts, 84% of whom present a debtor's petition).

We do not know the reasons why people from ethnic minorities are less likely to present their own bankruptcy petition. Therefore we cannot say with any certainty whether those reasons might also impact on the way people from ethnic minorities would access SIVAs, which require a positive act to go and seek the advice of an insolvency practitioner.

We need to build on our current levels of knowledge and try and understand why these differences are occurring. Research has been commissioned which we hope will help to explain why ethnic minorities are less likely to petition for their own bankruptcy (as opposed to being subject of a creditor's petition).

It is hoped that this will give us some insight into why these differences occur and enable us to ensure that if they are likely to impact on the SIVA process then we can address them prior to implementation. The results of the research are expected later this year, and we are confident that should the research highlight any areas that may impact on the SIVA proposals, we will be able to address them before they become operational.

Option 1: Do nothing

There would be no economic and social benefits to those debtors who require access to a debt resolution scheme that is clear, accessible and affordable and provides debt forgiveness. There would also be no benefit to creditors who would see no improvement to the rate of return from the current IVA system.

Option 2: **Improve access to IVAs through a code of best (industry wide) practice.**

This could improve access and provide some economic and social benefits for debtors but would not reflect the recommendations contained in Michael Green's academic research in this area i.e.

> *"From a practical and mechanistic standpoint it is suggested that the way forward will be best served by creating a framework for a régime which deliberately and purposely sets out to deal with the present deficiencies as a whole."*

Nor would it reflect the views of the majority of interested parties as set out in the forum notes: -

> *IVAs can and do work for traders but they could be modified so that they more closely meet the needs of non-traders (so called consumer debtors).*

- *The content of an IVA proposal should be simplified, as their current complexity deterred some potential users who would benefit from entering such an arrangement.*

Introducing a code of practice would not necessarily ensure that all providers followed it and there would be no compulsion for providers to adhere to it. Consequently debtors and creditors would feel that it would not achieve as many benefits as option 3.

Option 3: Leave the current IVA regime in place for the use of traders and those with complex affairs: Implement option 2 and introduce a SIVA regime for those with lower level of debts and whose affairs are relatively simple.

Economic benefits would include increased dividends to creditors, as the providers' costs would be reduced in a simpler IVA regime enabling more of the debtor's contributions to be paid as dividends. Creditors should also be able to reduce their own costs, as there would be less work to do on examining and voting on each IVA proposal.

There would be social benefits for debtors as they would be more able to access the revised IVA regime, which affords protection from creditor actions, and a finite debt resolution process, which provides financial rehabilitation.

This also reflects the conclusions of both academic research and the wide variety of interested parties represented in the Working Group. It would also meet the needs identified in the main body of their report and are reproduced below.

Creditors needs

To have confidence in an efficient, transparent and cost effective regime in authorised practitioners to ensure the debtor pays the maximum affordable contribution.

Debtor's needs

To easily access a fair and rational resolution process that is easily understood, has certainty and will endure.

<u>Costs</u>

Option 1: Do nothing

Doing nothing will not impose any extra costs on businesses charities and voluntary organisations.

Option 2: Improve access to IVAs through a code of best (industry wide) practice.

And

Option 3: Leave the current IVA regime in place for the use of traders

and those with complex affairs. Implement option 2 and additionally introduce a simple version of the IVA regime that is aimed at providing access for those with lower level of debts and whose affairs are relatively simple.

Neither option 2 nor option 3 is likely to entail increased costs for businesses, charities and voluntary organisations. Such organisations are already familiar with the IVA regime and the proposed new SIVA regime is very similar in nature. As these organisations regularly budget for staff training and development it is unlikely to increase their costs in this area as the changes could be incorporated into existing budgets without any additional cost. Initially there may however be some small cost involved for “finance” creditors in relation to the agreement of a Best Practice Model. They would need to be aware of where to access any agreed Standard Terms and Conditions and become familiar with the industry wide Executive Summary when it is adopted. However these changes could be incorporated into their existing training and development budgets.

The Cabinet Office Administrative Burdens project has already identified the financial cost of some burdens relating to voluntary arrangements that are imposed by the Insolvency Rules 1986. Implementing a simpler IVA regime would amend/remove the following

Rule	Description of Rule
5.14	Nominee’s report to the court
5.27	Report of the creditors’ meeting
5.31	Supervisors accounts and reports (IVA)
5.47	Supervisors accounts and reports (FTVA)

The draft Regulatory Impact Assessment on the proposal for the ‘Simplification of other voluntary arrangements’ gives a breakdown of the expected the costs saving resulting from the changes to the above rules.

Set up costs

Information Technology

It is likely that existing IVA providers will adapt their existing systems to work with the new procedure and there will be small changes necessary to the Individual Insolvency Register to enable SIVAs to be registered for public access.

Training costs

The Insolvency Service has experience of the training required for the implementation of new insolvency legislation. It designed and ran extensive training courses when the insolvency provisions of the Enterprise Act 2002 came into force during 2004. The SIVA regime will not require a comparable

level of training on the legislation, either in terms of Insolvency Service or provider staff.

If the training was designed and carried out by Insolvency Service staff and Insolvency Service premises were used wherever possible, then based on the time spent for the Enterprise Act training, the overall cost would be in the region of £10,000.

The training to familiarise provider staff with the new system is harder to quantify. At present the level of fees charged to users has not yet been quantified and it is not envisaged that this will be set by statute. Instead, it is expected that this will be dictated by prevailing market conditions within the low-cost sector and, specifically, by the demands of the intended consumers of the new procedure. In summary, any familiarisation costs are expected to be absorbed into the induction period following implementation.

Publicity/information

There would need to be a publicity initiative to ensure that all interested parties are aware in good time of the changes and that, for example, those who may benefit from entry to a SIVA are aware of it as an option. This may entail the production of explanatory leaflets or the amendment of existing guidance, for example, The Insolvency Service's "*A Guide to Bankruptcy*"[25]

If new leaflets are produced that are similar to "Fast-track Voluntary Arrangements"[26] - the potential costs would be as follows:

To produce 100,000 leaflets:

Printing (£6,000 per 25,000 copies)
£24,000
Plain language translation (an average of £3,000 per translation)
Distribution
£5,200
Total
£35,200

There would be additional costs in terms of time taken to write the leaflet and obtain lawyers' clearance.

Ongoing costs of administering the scheme

It is not anticipated that there would be substantial ongoing costs since administration of SIVAs are a simpler process than standard IVAs and the fees charged will be set on the basis of profitability for the providers and affordability to the user. The remaining costs i.e. of registration on the Individual Insolvency Register should be minimal. There should be cost savings in terms of court time, since their involvement will be in terms of dispute resolution only.

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[25] http://www.insolvency.gov.uk/pdfs/guidanceleafletspdf/guidetobankruptcy.pdf

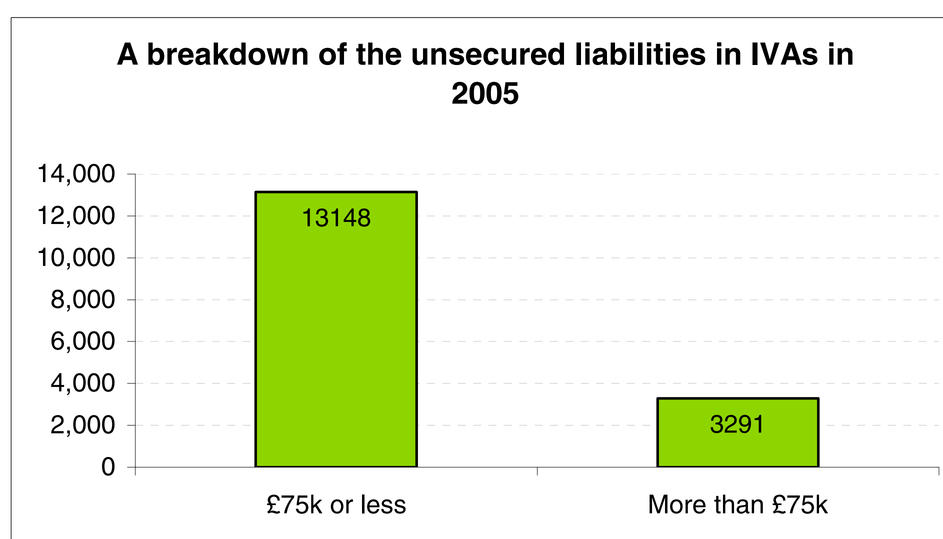
[26] http://www.insolvency.gov.uk/pdfs/guidanceleafletspdf/ftva.pdf

6. Compensatory simplification measures

SIVAs aim to assist those in debt who cannot access the currently available remedies and who have no way to pay what they owe within a reasonable time scale. However, they are part of a wider package of proposals aimed at tackling the overall way that debt is dealt with.

The introduction of SIVAs is anticipated to lead to a substantial reduction in overall numbers of people entering into standard IVAs, a reduction which should free up court time, mainly in terms of the maintenance of a file for each arrangement approved by creditors.

In the calendar year 2005, approximately 80% of all IVAs accepted in the 2005 calendar year [27] had unsecured liabilities of £75,000 or less which would enable them to apply for entry to the new procedure:



7. Small Firms' Impact Test

A letter to a sample of the providers of IVAs (who represent by far the largest stakeholder group in terms of the potential impact of the proposal) together with a questionnaire about the proposed new procedure was issued on 9 October 2006 with a deadline of 30 November 2006. The letter enclosed a questionnaire seeking basic information about their firm and the relevant impacts of the proposals. A summary of the responses is shown below at Annex A.

It is not anticipated that these proposals will have any adverse effects on small businesses and evidence from the Small Business Litmus Test, the consultation exercise and the working group meetings held so far would indicate that the proposals are broadly welcomed.

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[27] Source: KMPG

8. Competition Assessment

The market potentially affected by the introduction of SIVAs mainly relates to licensed insolvency practitioners and existing providers of DMPs (some of whom are insolvency practitioners). As at 1 January 2005, there were 1,691 licensed insolvency practitioners of whom 1,204 actually took appointments in insolvency cases. Insolvency practitioners are regulated by one of eight groups, seven are regulated through Recognised Professional Bodies and the Secretary of State regulates the eighth group.

As IVAs and the proposed SIVA regime will be provided through licensed insolvency practitioners and because there is already competition between such practitioners it is our view that the introduction of this proposal will not have an adverse effect on the existing practitioner market.

The Insolvency Service has internally applied the Competition Filter Test (further details at Annex B below), which indicates that a simple competition assessment will be required, as it appears that the proposals are likely to have little or no effect on competition. Consequently The Insolvency Service believes the proposals will have no adverse effects.

9. Enforcement and sanctions

Currently the IVA regime has an effective enforcement and sanction regime. Section 262A of the Insolvency Act 1986 sets out the offence of 'False representation etc' which specifies that for the purpose of obtaining the approval of his creditors to his proposal, the debtor commits an offence if he makes any fraudulent representation or fraudulently does, or omits to do anything in that regard. If it appears to a licensed insolvency practitioner that the debtor is guilty of any such offence the practitioner is required to report the matter to the Secretary of State (section 262B). Licensed insolvency practitioners are currently regulated through a number of professional bodies[28]. If a SIVA was introduced it would use similar enforcement and sanction provisions.

10. Monitoring and review

In common with the rest of Government, The Insolvency Service is committed to evaluating its proposals. It has sought specific training on evaluation from recognised sources for the relevant staff and has previous experience from the evaluation of the insolvency provisions of the Insolvency Act 2000 and the Enterprise Act 2002.

The introduction of a SIVA regime will be evaluated over a three-year period

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[28] More information on licensing bodies can be accessed on http://www.insolvency.gov.uk/information/iparea/iparea.htm

and a summary to be made available to the public. The principal aim of the evaluation will be to provide a comprehensive assessment of whether, to what extent and how the recommendations of the working group, insofar as they are accepted by consultees, meet policy objectives. The evaluation will also provide information and data that can be used to inform future policy decisions.

11. Implementation and delivery plan

A delivery plan accompanies this Regulatory Impact Assessment and is available at Annex C. Once legislation is in place to enable SIVAs to exist, substantial further secondary legislation will be required before they can become operational.

12. Post-implementation review

We propose to keep under review the effectiveness and impact of these proposals, and report three years after commencement. That report will examine whether or not they achieve the objective of assisting the financially excluded to obtain debt relief, within a system that provides proper recourse and appropriate sanctions where the debtor's conduct has been culpable and creditors have suffered as a result.

We will at the same time monitor the effect of the proposals on the business sector. We will also keep under review the levels at which the entry criteria are set.

An evaluation planning paper accompanies this Regulatory Impact Assessment and is attached at Annex B**.**

13. Summary and recommendation

A summary of the various options and their advantages and disadvantages is contained in the table below.

Option	Monetary costs	Benefits	Disadvantages
1- Do nothing	None	No need to legislate.	Limits access to IVAs and this does not reflect the suggestions of both independent academic research and interested parties
2 - Introduce Best Practice Models	None for most businesses, charities and voluntary organisations however for	No need to legislate	Continues to limit access to IVAs and this does not reflect the suggestions of

.	"finance" creditors there will be some cost involved in agreeing what should be contained in the best practice model. Thereafter IT and training costs can be absorbed into normal budgets on these areas.		both independent academic research and interested parties
3 Best practice model AND introduce a SIVA regime	None for most businesses, Charities and Voluntary Organisations However for "finance" creditors there will be some cost involved in agreeing what should be contained in the best practice model Thereafter IT and training costs can be absorbed into normal budgets on these areas.	Reflects the views of both academic research and interested parties. Reflects the conclusions of the stakeholder Working Group specifically set up to examine IVAs and how they can be improved. Increases access for debtors (including those who do not owe significant amounts) to a regime that is clear, accessible and affordable	

We think that in order for the SIVA provisions to be fair and equitable to all parties, it will be necessary to legislate. We therefore recommend introduction of the new scheme of debt relief.

ANNEX A: IMPROVING INDIVIDUAL VOLUNTARY ARRANGEMENTS – PROPOSED INTRODUCTION OF A SIMPLIFIED INDIVIDUAL VOLUNTARY ARRANGEMENT

REGULATORY IMPACT ASSESSMENT

QUESTIONNAIRE - CONSULTATION WITH LARGER FIRMS –summary of responses

Having considered the proposed introduction of a simplified individual voluntary arrangement in the draft Regulatory Impact Assessment, please could you answer the following questions in order to assist in the preparation of a finalised assessment? Wherever possible, it would be appreciated if specific figures for compliance costs or benefits could be used.

About your firm

1. Approximately how many insolvency staff are employed in your firm?

The respondents ranged from 30 to 300 staff employed in total.

2. Approximately how many licensed insolvency practitioners are there in your firm who actively practice?

Between 2 and 30

3. What is the average number of insolvency appointments taken by your firm in a year?

Between 1,000 and 1,200

Compliance costs to your firm

4. What do you estimate to be the total one-off learning cost to your firm of assimilating the proposed changes?

This was either assimilated within the existing training budget or assessed as being a one-off cost of £22,441

5. Do you anticipate that there will be any other costs to your firm as a result of these changes? If yes, please specify.

None.

Expected benefits to your firm

6. Are there likely to be any cost savings or benefits to your firm not mentioned in the Regulatory Impact Assessment?

No additional savings were identified. It was noted that “the growth in volume will benefit the providers and the simplification of the process will benefit the creditors and lower entry levels will benefit the debtor.”

If yes please specify: -

a) Nature of savings; and

b) Whether one-off or recurring; and

c) Estimated amount.

Other matters

7. Please include details of any other matters not referred to above that you consider relevant in relation to the costs or benefits to your firm or the practicalities of introducing the proposed measure.

No other matters were raised.

ANNEX B: COMPETITION FILTER TEST

The latest available data is for 2005, which shows that there were 20,270 IVA cases handled by 289 firms

Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?
Yes, the latest available information is for 2005 which shows the largest provider handles 3,290 out of a total of 20,270 cases which is 16%

Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?
No

Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?
No
Q4: Would the costs of the regulation affect some firms substantially more than others?
No, the proposed SIVA regime is very similar to that which currently exists for IVAs

Q5: Is the regulation likely to affect the market structure, changing the number or size of firms?
No, data available shows that since 1995 there has been little change in the number of firms involved in IVAs although the volume of case numbers has increased significantly

Q6: Would the regulation lead to higher set-up costs for new or potential firms that existing firms do not have to meet?
No, the proposed SIVA regime is very similar to that which currently exists for IVAs

Q7: Would the regulation lead to higher ongoing costs for new or potential firms that existing firms do not have to meet?
No the proposed SIVA regime is very similar to that which currently exists for IVAs

Q8: Is the sector characterised by rapid technological change?
No

Q9: Would the regulation restrict the ability of firms to choose the price, quality, range or location of their products?
No

ANNEX C: DELIVERY PLAN

We envisage that the time between the consultation being launched and the Order being approved by Parliament will take approximately 12 months.

This delivery plan therefore looks in outline at the steps that will be taken between the launch of the consultation and the approval of the Order, but it should be borne in mind that a considerable quantity of preparatory work will not form part of the delivery plan.

Success Criteria:

We consider that our proposals will have been effectively implemented if: it becomes possible for eligible individuals to successfully obtain a SIVA without difficulty; for IPs, the debt advice sector and creditors to understand the process and how it affects them; and for the system to have sufficient integrity to detect and tackle any misconduct by the debtor concerning his insolvency.

Measures that will enable us to ascertain whether our objectives have been achieved will include:

- Number of challenges to an approved SIVA does not exceed 10% of the number of orders made.

- Number of cases where the debtor is found to be guilty of misconduct (including failure to disclose facts concerning the debtor's eligibility for a SIVA) does not exceed 1% of orders made.

Plan for implementation preceding Parliamentary approval of the Order.

No later than 1 month after launch of the consultation- The Insolvency Service will hold a seminar for interested parties and issue a press release

Between consultation and Parliamentary stages of the order- The Insolvency Service will publicise the consultation document and draft of the proposed primary and secondary legislation to all parties interested in the proposals. The Service will, wherever possible, attend and highlight the proposals at available opportunities. The Service will, where possible, meet with representative bodies to discuss the proposals and draft legislation.

AMENDMENT OF SECTION 389A OF THE INSOLVENCY ACT 1986 - DRAFT RIA

1. Title of proposal

Amendment of section 389A of the Insolvency Act 1986 (c.45), which provides for the authorisation of nominees and supervisors of voluntary arrangements.

2. Purpose and intended effect of measure

(i) The objective

The proposal is to amend section 389A of the Insolvency Act 1986 and is aimed at reducing the burden on individuals who wish to apply for authorisation to act as nominee or supervisor in a voluntary arrangement. This is made to a body that can be recognised for that purpose by the Secretary of State. Insolvency practitioners and their qualification are covered by Part XIII of the Insolvency Act 1986 (sections 388 to 398).

(ii) Devolution:

The individual insolvency provisions of the Insolvency Act 1986 apply only to England and Wales.

(iii) The background

Section 389A was inserted into the Insolvency Act 1986 by the Insolvency Act 2000 (c.39). It allows a person to act as nominee or supervisor in a voluntary arrangement provided that: -

- he is a member of a body recognised for that purpose by the Secretary of State and
- he has security regarding the performance of this function.

At present only insolvency practitioners (IPs) are licensed to act as nominees and supervisors in IVAs. An IP is also licensed to act in other individual insolvency proceedings, for example as a trustee in bankruptcy. An IP can also be licensed to act in corporate proceedings and is eligible to act as the nominee/supervisor in a company voluntary arrangement, as the administrator in a company administration and as an administrative receiver or liquidator.

The Insolvency Act 2000 recognised that there was scope for widening the group of persons who could deal with a voluntary arrangement either corporate or individual.

An informal alternative to an IVA is a Debt Management Plans (DMP). In 2005 there were about 218,000[29] DMPs. DMPs have a multiplicity of providers in

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[29] Taken from slides at the DFD Direct Conference on 9 November 2006)

both the public and private sector and they do not have to be operated through an IP. The volume of DMPs has given their providers extensive experience of the debt problems and solutions for individuals. However such providers are not always qualified IPs.

Additionally there is a group, The Society of Turnaround Practitioners that specialises in company rescue but who are not always IPs and some of its members may seek authorisation to solely carry out corporate work, such as in company voluntary arrangements (CVAs).

(iv) Rationale for Government intervention

Although at present 2 bodies have indicated that they will seek recognition, the legislation is hard to understand. This is because section 389A of the Insolvency Act 1986 refers to ‘voluntary arrangements’, which encompass both company voluntary arrangements and individual voluntary arrangements. Some have interpreted this to mean they should have experience of both IVA and CVAs and that they are therefore unable to seek recognition to work exclusively, say, on IVAs. By enlarging the group who can provide IVAs (or CVAs), debtors (and companies) will have more choice and they will be less burdened in seeking assistance in their financial affairs.

The proposal would reduce the burden on bodies seeking authorisation as they would only need to demonstrate that their body had rules ensuring its members ‘meet acceptable requirements as to education and practical training and experience’ in either company or individual voluntary arrangements.

3. Consultation

(i) Within government
None.

(ii) Public consultation
None, however there has been limited consultation with a number of interested parties who generally support the proposal.

4. Options

Option 1: Do nothing
This would leave section 389A unclear and restrict the potential pool of nominee/supervisors and therefore deny indebted individuals a wider range of professional support/expertise who can deal with their debt.

Option 2: Amend section 389A

This would make section 389A clear and increase the potential pool of nominee/supervisors, to be known as Voluntary Arrangement Practitioners

(VAPs), and therefore deny indebted individuals a wider range of professional support/expertise who would be able to deal with their debt.

5. Costs and Benefits

Business sectors affected

Recently a number of banks have increased their bad debt provision to take account of rising insolvency numbers.

In October 2006 personal debt reached £1,268 billion and according to figures from the Bank of England, for the third quarter of 2006, £2,174 million was written off in bank loans[30]. Some of this is owed by people who would potentially benefit from the increased accessibility brought about by the introduction of VAPs.

The banking and credit card sector will also be able to reduce their costs as a result of the combination of the proposals in this RIA and the proposed introduction of SIVAs in which they would have less work to carry out in looking at IVA proposals and proposing or dealing with modifications.

At the same time that the improved IVA regime mentioned above would continue to use licensed insolvency practitioners who are regulated by their professional bodies or the Secretary of State (as at 1 January 2006 there were 1,688 licensed practitioners). The introduction of VAPs would increase the pool of providers leading to cost savings on two fronts. To some extent the two sets of proposals can be seen as complementary with each other but it is still recognized that they will not suit the requirements of all types of debtors and there will still be a number of them who will want to arrange a DMP or use another alternative. In addition to those who want to use another method, there will be those who will be unable to access the scheme – it is not a cure for everyone's debt problems.

Issues of equity and fairness

It could be argued that people who get into debt should repay their debts in full and the creditors should not provide any debt forgiveness. However, IVAs and bankruptcy already provide some debt forgiveness and the revised regime is focused on increasing accessibility to the process as a whole. It is therefore aimed at people who are in financial difficulty generally as a result of living beyond their means and/or a life accident. Generally IVA debtors are required to repay a proportion of their debts out of their disposable income for a minimum of five years and so would have endured some financial restraint for a significant period.

Although creditors will not usually be repaid in full, by introducing VAPs and

[30] http://www.bankofengland.co.uk/statistics/ms/2006/dec/bankstats_full.pdf

therefore providing the debtor with access to a larger pool of providers, the creditor can still expect a better return than from bankruptcy. In general terms it is also expected that the debtor would learn from their experience of the discipline required to successfully complete an IVA or SIVA and use credit more responsibly with a consequent reduction in the risk to finance providers.

Social Impacts – Racial Equality Impact Assessment

In January 2005 The Insolvency Service issued ethnicity and gender questionnaires to 1,600 insolvency practitioners. 896 completed forms were received, this being a response rate of 56%. Of those returned forms, only 21 insolvency practitioners (1.3%) refused to provide their ethnic origin data. Of the 896 completed forms returned, 640 (71%) were from male insolvency practitioners with a further 88 (9.8%) were from females. There was a much higher proportion of insolvency practitioners that refused to state their gender, this being 168 (18.7%). It is not considered that the introduction of VAPs will have any race equality impact as it is aimed at all groups who fall within the criteria for entry. The Insolvency Service does propose that ethnicity details of VAPs will be maintained for future evaluation.

Benefits

Option 1: Do nothing

There would be no economic and social benefits to those debtors who require access to a debt resolution scheme that is clear, accessible and affordable and provides debt forgiveness.

Option 2: Amend section 389A

This will clarify that applicants for authorisation to act as VAP can apply to act only in individual or company voluntary arrangements, or both. This will provide a wider range of authorised persons and improve a debtor's access to the voluntary arrangement regime.

5. Costs

Option 1: Do nothing

Will cost businesses charities and voluntary organisations nothing to comply.

Option 2: Amend section 389A

Is likely to entail no increased costs for businesses, charities and voluntary organisations. Such organisations are already familiar with insolvency practitioners and the IVA regime. The proposed VAP regime is very similar in nature to that for IPs. As these organisations regularly budget for staff training and development it is unlikely to increase their costs in this area as the changes could be incorporated into existing budgets without any additional cost.

Set up costs

Information Technology

The Insolvency Service already keeps an electronic record of licensed insolvency practitioners and its IT System has the capacity to encompass the new style VAPs.

Training costs

The Insolvency Service would not require specific training on VAPs. Its internal Technical Manual would need updating to reflect the introduction of VAPs but the cost of this work is negligible.

Publicity/information

The Insolvency Service has already engaged with parties who are interested in VAPs.

Ongoing costs of administering the scheme

It is not anticipated that there would be substantial ongoing costs since administration of VAPs is a similar process as that for IPs.

6. Compensatory/simplification measures

The introduction of VAPs aims at improving the currently available remedies for those in debt and who have no way to pay what they owe within a reasonable time scale. However, it is part of a wider package of proposals aimed at tackling the overall way that debt is dealt with.

The introduction of VAPs is anticipated to lead to an increase in overall numbers of people entering into standard IVAs but more likely into SIVAs, the latter freeing up court time because there would be no need to maintain a file for each arrangement approved by creditors. A consequence may be the reduction in the number of Debt Management Plans as IVAs/SIVAs become more cost effective as a whole.

7. Small Firms' Impact Test

It is not anticipated that these proposals will have any adverse effects on small businesses.

8. Competition Assessment

The market potentially affected by the VAPs mainly relates to licensed insolvency practitioners and existing providers of DMPs (some of whom are insolvency practitioners). As at 1 January 2005, there were 1,691 licensed insolvency practitioners of whom 1,204 actually took appointments in insolvency cases. Insolvency practitioners are regulated by one of eight groups, seven are regulated through Recognised Professional Bodies and the Secretary of State regulates the eighth group.

As IVAs and the proposed SIVA regime will be provided through licensed insolvency practitioners, and because there is already competition between such practitioners, it is our view that the introduction of VAPs will not have an adverse effect on the existing practitioner market.

8. Enforcement and sanctions

Licensed insolvency practitioners are currently regulated through a number of professional bodies[31]. If VAPs are introduced they would have similar enforcement and sanction provisions.

9. Monitoring and review

In common with the rest of Government, The Insolvency Service is committed to evaluating its proposals. It has sought specific training on evaluation from recognised sources for the relevant staff and has previous experience from the evaluation of the insolvency provisions of the Insolvency Act 2000 and the Enterprise Act 2002.

The introduction of the VAP regime will be evaluated over a three-year period and a summary to be made available to the public. The principal aim of the evaluation will be to provide a comprehensive assessment of whether, to what extent and how the recommendations of the working group insofar as they are accepted by consulters meet policy objectives. The evaluation will also provide information and data that can be used to inform future policy decisions.

10. Post-implementation review

We propose to keep under review the effectiveness and impact of these proposals and report three years after commencement on whether or not they achieve the objective of widening the range of persons qualified to act in voluntary arrangements.

11. Summary and recommendation

A summary of the various options and their advantages and disadvantages is contained in the table below.

Option	Monetary costs	Benefits	Disadvantages
1- Do nothing	None	No need to	Limits

[31] More information on licensing bodies can be accessed on http://www.insolvency.gov.uk/information/iparea/iparea.htm

		legislate	access to VAs.
2 – Amend section 389A	None for most businesses, Charities and Voluntary Organisations IT and training costs can be absorbed into normal budgets on these areas.	Increases access for debtors.	

We think that in order to simplify access for VAPs it will be necessary to amend section 389A of the Insolvency Act 1986.

SIMPLIFICATION OF OTHER VOLUNTARY ARRANGEMENTS –

DRAFT RIA

1. Title of proposal

Amendment of Part VIII of the Insolvency Act 1986 which provides for the Individual Voluntary Arrangement Regime.

2. Purpose and intended effect of measure

(i) The objectives

The proposals are designed to: -

- amend the voluntary arrangement of individuals so that routine papers are no longer filed at court, and
- to provide for reduced and more focused reporting requirements.

(ii) Devolution:

The individual insolvency provisions of the Insolvency Act 1986 apply only to England and Wales.

(iii) The background – routine filing

When IVAs were first introduced, an application had to be made to the court to obtain an interim order (IO). Since 2003 it has been possible for an IVA to be obtained without an interim order (non IO IVAs). Since 1 April 2004 an undischarged bankrupt has been able to apply for a fast track voluntary arrangement (FTVA).

We propose that in non-IO IVAs and FTVAs there will be no routine filing of papers with the court. We propose to replace the current system with one which only applies where a creditor wishes to apply to the court to challenge a decision to approve a debtor's proposal. We propose that if such an application were made, the Supervisor would have to file in court the papers he used to routinely file, if they are relevant to the application. Those papers would be sent to the court in time to determine the creditors application.

This proposal will reduce the burden on those who act as the supervisor whose cost will be reduced, as they will no longer have to routinely file papers at court.

Other benefits

The court system will also benefit, as it will no longer have to receive and retain a file of IVA papers. In 2006 there were 44,332 IVAs all of which generated a rarely used court file.

(iii) The background –Reduced reporting

Currently the IP as Supervisor of an IVA and the Official Receiver as the Supervisor of an FTVA are required to produce an annual report, which is sent to all the creditors (Rules 5.31 and 5.47 of the Insolvency Rules 1986). This creates a burden upon the IP and Official Receiver to issue the reports

and some creditors have advised us that usually they take little interest in such reports. This is particularly true where the arrangement is progressing successfully and payments are being received as planned.

We propose that, non IO and FTVA provisions should be amended to reduced the burden (and financial costs) on the IP (and Official Receiver) and enable reports to be produced only where there are factors that have, or will, affect the durability of the debtor's IVA or FTVA.

Other benefits Reporting by exception will reduce the administrative burden on, and reduce the costs to creditors who will receive only pertinent information.

The Regulatory Impact Assessment for the Simplified Individual Voluntary Arrangements listed the proposed changes to existing rules which will be included in that proposal.

There is no detailed information relating to the proportion of interim order and non-interim order cases. However the Insolvency Act 2000 introduced non-interim order cases. The evaluation report for that Act sought information from IPs on how many cases they handled which involved interim orders. The range of responses was between zero and 10%.

It should be noted that only part of the burden in rule 5.27 is being lifted as the IP will still have to prepare a report of the creditors meeting but he will no longer have to file that report in court for a non-interim order IVA.

The changes to rules will also apply to the existing IVA regime. The estimated cost savings on administrative burdens (using the figures provided by external consultants) amounts to just under £500,000 and consequently the impact in terms of administrative burden reduction is small.

(iv) Rationale for Government intervention

The proposals for reduced filing at court and reporting also reflects the Cabinet Office policy for reducing 'Administrative Burdens'.

3. Consultation

(i) Within government
Informal soundings have been made at the Department for Constitutional Affairs who are content with this approach.

(ii) Public consultation
None.

4. Options

Option 1: Do nothing

This would mean unnecessary papers are routinely filed at court and creditors would routinely receive unnecessary information.

Option 2:

To amend the non-Interim Order and Fast Track Voluntary Arrangement regimes to the effect that routine papers are no longer filed at court and to provide for reduced and more focused reporting requirements.

This would mean unnecessary papers are no longer filed at court and creditors would only receive necessary information.

5. Costs and Benefits

Business sectors affected
Insolvency practitioners will be the main sector affected, with creditors generally also having an interest in the proposed reform. The main effect will be to reduce costs for all partiers, which will tend to make the market for IVAs more competitive.

Issues of equity and fairness

None. There is no evidence that any specific or foreseeable interests will be disadvantaged.

Social Impacts – Racial Equality Impact Assessment

None. It is not considered that the removal of routine filing will have any race equality impact, as there is no evidence of disproportionate use by any specific ethnic groups.

Benefits

Option 1: Do nothing

There would be no economic and social benefits for the court or for creditors.

Option 2:
To amend the non Interim Order and Fast Track Voluntary Arrangement provisions to the effect that routine papers are no longer filed at court and to provide for reduced and more focused reporting requirements.

This would mean unnecessary papers are no longer filed at court and creditors would only receive necessary information.

5. Costs

Option 1: Do nothing

Will cost businesses charities and voluntary organisations nothing to comply.

Option 2: Amend the reporting requirements

Is likely to reduce costs for the court who will no longer have to file routine papers. It is also likely to reduce costs for creditors, as they will only receive information of cases where the expected dividend is in doubt.

The reduction in the work of IPs will mean their fee levels are reduced and so more of the debtor's contribution to the IVA will be available for distribution to creditors.

Set up costs

Information Technology

None.

Training costs

Negligible.

Ongoing costs of administering the scheme

It is anticipated ongoing costs will be reduced.

6. Compensatory simplification measures

These proposals are in accord with efforts aimed at general de-regulation.

7. Small Firms' Impact Test

It is not anticipated that these proposals will have any adverse effects on small businesses.

8. Competition Assessment

The Insolvency Service has internally applied the Competition Filter Test and concluded that the proposals are likely to have little or no effect on competition.

8. Enforcement and sanctions

Licensed insolvency practitioners are currently regulated through a number of professional bodies[32] who will amend their regulatory procedures.

9. Monitoring and review

[32] More information on licensing bodies can be accessed on http://www.insolvency.gov.uk/information/iparea/iparea.htm

In common with the rest of Government, The Insolvency Service is committed to evaluating its proposals. It has sought specific training on evaluation from recognised sources for the relevant staff and has previous experience from the evaluation of the insolvency provisions of the Insolvency Act 2000 and the Enterprise Act 2002.

The introduction of the changes will be evaluated over a three-year period and a summary to be made available to the public.

10. Post-implementation review

We propose to keep under review the effectiveness and impact of these proposals and report three years after commencement on whether or not they achieve the objective of widening the range of persons qualified to act in voluntary arrangements.

11. Summary and recommendation

A summary of the various options and their advantages and disadvantages is contained in the table below.

Option	Monetary costs	Benefits	Disadvantages
1- Do nothing	None.	No need to Legislate.	Ongoing unnecessary use of time and other resources.
2 – Amend	None for most businesses, Charities and Voluntary Organisations. IT and training costs can be absorbed into normal budgets on these areas.	Reduces costs for the court and creditors.	None.

REPEAL THE DEEDS OF ARRANGEMENT ACT 1914
DRAFT RIA

1. Title of proposal

Repeal of the Deeds of Arrangement Act 1914.

2. Purpose and intended effect of measure

(i) The objective

To remove outdated legislation from the statute book.

(ii) Devolution:

The Deeds of Arrangement Act 1914 only applies only to England and Wales.

(iii) The background

The Deeds of Arrangement Act 1914 (c.47) makes provision for a debtor to enter into an arrangement with his creditors as an alternative to bankruptcy. The Act sets out the requirements for registration, appointment of a trustee and other administrative points that need to be complied with for an arrangement under the Act to be considered valid.

The report of the Cork Committee in June 1982, whose purpose was to consider the detailed provisions of what became the Insolvency Act 1986, recommended that the Act be repealed. This was because deeds of arrangement were legally complex and unreliable in practice and therefore little used even at that time. However it was not repealed despite the recommendation.

To qualify as a licensed insolvency practitioner, candidates are required to learn about the Deeds of Arrangement Act 1914, which they are unlikely to encounter in their working life, and the repeal will reduce the burden on prospective insolvency practitioners.

(iv) Rationale for Government intervention

Since the introduction of IVAs by the Insolvency Act 1986 the use of the Deeds of Arrangement Act has reduced drastically. In 1987 there were 31 such Deeds registered and this has declined to none in 2004 and 2005.

The repeal of the Deeds of Arrangement Act 1914 and consequential deletion of associated secondary legislation and references to deeds of arrangement in primary and secondary legislation owned by other departments, will rationalise and simplify individual insolvency legislation.

3. Consultation

(i) Within government

None.

(ii) Public consultation

None, however there has been limited consultation with a number of interested parties who all support the proposal.

4. Options

Option 1: Do nothing

This would leave a little used portion of law on the statute book and require potential insolvency practitioner candidates to learn a body of law they are extremely unlikely to encounter in practice.

Option 2: Repeal the Deeds of Arrangement Act 1914

This would reduce the statute book and simplify the syllabus of potential insolvency practitioners.

5. Costs and Benefits

Business sectors affected

Insolvency practitioners will be the main sector affected, with financial and legal advisors also having an interest in proposed abolition. However in view of the current lack of use of the deeds, the effect is likely to be small.

Issues of equity and fairness

None. There is no evidence that any specific or foreseeable interests will be disadvantaged.

Social Impacts – Racial Equality Impact Assessment

None. It is not considered that the abolition of DOAs will have any race equality impact, as it will apply equally to all groups who would have considered applying for such deeds. There is no evidence that they were used disproportionately by any specific ethnic groups.

Benefits

Option 1: Do nothing

There would be no economic and social benefits for potential insolvency practitioners.

Option 2: Repeal the Deeds of Arrangement Act 1914

This will simplify the examination syllabus for potential insolvency practitioners as well as rationalising and simplifying the regime as set out above.

5. Costs

Option 1: Do nothing

Will cost businesses charities and voluntary organisations nothing to comply.

Option 2: Repeal the Deeds of Arrangement Act

Is likely to entail no increased costs for businesses, charities and voluntary organisations.

Set up costs

Information Technology

Because of the historical data and very low numbers of Deeds The Insolvency Service keeps manual records.

Training costs

None.

Publicity/information

The Insolvency Service has already engaged with parties who are interested in Deeds of Arrangement who support their repeal.

Ongoing costs of administering the scheme

None

6. Compensatory simplification measures

The repeal of the Deeds of Arrangement Act 1914 is purely a compensatory simplification measure aimed at de –regulation.

7. Small Firms' Impact Test

It is not anticipated that these proposals will have any adverse effects on small businesses.

8. Competition Assessment

The market potentially affected by the repeal of the Deeds of Arrangements Act 1914 relates to licensed insolvency practitioners. Given there have been no new cases since 2003 we have not conducted a competition assessment.

9. Monitoring and review

In common with the rest of Government, The Insolvency Service is committed to evaluating its proposals. It has sought specific training on evaluation from recognised sources for the relevant staff and has previous experience from the evaluation of the insolvency provisions of the Insolvency Act 2000 and the Enterprise Act 2002.

The introduction of the changes will be evaluated over a three-year period and a summary to be made available to the public.

10. Post-implementation review

We propose to keep under review the effectiveness and impact of these proposals and report three years after commencement on whether or not they achieve the objective of widening the range of persons qualified to act in voluntary arrangements.

11. Summary and recommendation

A summary of the various options and their advantages and disadvantages is contained in the table below.

Option	Monetary costs	Benefits	Disadvantages
1 – Do nothing.	None.	No need to Legislate.	Unnecessary law remains on the statute book.
2 – Repeal the Deeds of Arrangement Act 1914.	None for most businesses, Charities and Voluntary Organisations.	De-regulation.	None.