

UK REGULATION OF INSOLVENCY PROFESSION SET FOR REFORM IN 2022

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UK Restructuring and Insolvency Alert

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INTRODUCTION

The UK insolvency profession is relatively small and highly specialised. In the region of 1,570 professionally qualified Insolvency Practitioners are authorised under the Insolvency Act 1986 to act as office-holders in formal insolvency procedures for individuals and businesses. On 21 December 2021, the UK government issued [a consultation called "The future of insolvency regulation"](#) asking for input from interested parties by 25 March 2022.

THE CURRENT REGIME

The supervision of Insolvency Practitioners is currently carried out by four professional bodies recognised by the Secretary of State at the Department of Business, Energy and Industrial Strategy to perform that function, together the RPBs. The Insolvency Service is a UK government agency that aims to deliver economic confidence by supporting those in financial distress, tackling financial wrongdoing, and maximising returns to creditors. The Insolvency Service also acts as oversight regulator on behalf of the Secretary of State. The RPBs are required to regulate in accordance with statutory regulatory objectives introduced by the Small Business Enterprise and Employment 2015, which aim to ensure fair treatment, transparency, integrity, consistency, and delivery of high-quality services at a reasonable cost.

THE CONCERNS

The Government has concluded that the current regulatory regime is no longer fit for purpose. It says that the way Insolvency Practitioners are regulated (as individuals) has not kept pace with changes in the way the insolvency market operates, with an increase in practitioners now working as an employee of a firm employing several Insolvency Practitioners. The current regime's inability to tackle behaviour at a firm level has created the potential for conflict between the interests of the relevant firm and the statutory duties of the individual Insolvency Practitioners.

THE CONSULTATION PLANS

The consultation sets out plans to reform, strengthen, and modernise the insolvency regulatory regime through the creation of a single regulator of Insolvency Practitioners, the introduction of firm regulation for insolvency practices, a public register of Insolvency Practitioners and firms that offer insolvency services, and a compensation scheme. There are also proposals for some limited interim reforms to the Insolvency Practitioner bonding regime.

OPTIONS FOR REFORM OF THE CURRENT REGULATORY FRAMEWORK

The government proposes to use primary legislation to create a single independent government regulator, who will be a statutory office holder. The regulator would have powers to authorise, regulate, and discipline individual Insolvency Practitioners, as well as set regulatory standards. The regulator would also have the power to delegate certain functions to other suitable bodies. Crucially, the regulator would also have the power to regulate firms providing insolvency services, as well as individuals.

OPTIONS TO STRENGTHEN THE REGULATORY REGIME

A consultation on the introduction of the authorisation and regulation of firms that offer insolvency services, that is, the provision of persons to act as Insolvency Practitioners in formal insolvency proceedings. The regulation of firms would run alongside regulation of individual Insolvency Practitioners. The statutory regulation of firms would require legislative change.

A single system of registration would replace the current arrangements for licensing an Insolvency Practitioner. The government is consulting on a proposal to introduce a requirement for Insolvency Practitioners and firms to meet certain conditions (as Insolvency Practitioners do now) before they can be entered onto a public register. Insolvency Practitioners would have to be qualified to practise, meet requirements for training and hold requisite insurances. Similarly, firms would have to meet certain minimum threshold requirements before registration, which might include having their centre of main interest or registered office in Great Britain, being able to demonstrate their solvency and that they have sufficient qualified Insolvency Practitioners and administrative support staff to carry out the level of work undertaken.

An exploration of views on whether the insolvency regulatory framework should include a formal compensation process for those affected in a negative way by Insolvency Practitioners/firms. Under the government's proposal for a single regulator, the regulator would have a range of disciplinary sanctions to reprimand, fine, direct or to withdraw individual or firm authorisation. The power to direct could include the ability for the regulator to require an Insolvency Practitioner/firm to pay compensation where there has been an error or mistake or for a service failure causing undue anxiety or distress. The consultation also seeks views on whether Insolvency Practitioners should be required to contribute to a fund which would pay compensation where required. The government intends that the new regulatory model should be self-funding and this chapter explores different options for funding.

While the cost of implementation of the new regulatory model would be met by government, the running costs would be met by fees levied on Insolvency Practitioners and regulated firms. However, this would be on a cost recovery basis only. The consultation proposals for regulation of firms, if adopted, would see additional costs imposed on some firms, where it was proportionate to do so.

PROPOSALS FOR LIMITED REFORMS TO THE CURRENT BONDING REGIME

The consultation contains proposals for reforms of bonding arrangements to improve existing safeguards for creditors against the fraudulent or dishonest behaviour of a small minority of Insolvency Practitioners. The government's review of the current arrangements has concluded that in the rare instances where a bond claim is required, the system does not work as well as it should. The government is seeking views on proposals designed to change elements of the current system for bonding Insolvency Practitioners.

CONCLUSION

Trade bodies representing Insolvency Practitioners have voiced concern about a future single regulator being a creature of government. They say that the government assuming this role would lead to a conflict of interest as the government would set insolvency legislation, regulate insolvency practitioners and then effectively compete with those same insolvency practitioners for certain work through the Insolvency Service — while not being subject to the same regulation itself. Any independent single regulator will need to demonstrate genuine independence, as well as a level playing field for the public and private sector parts of the insolvency profession in order to win the trust of those Insolvency Practitioners and firms that it seeks to supervise.

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