



WRITTEN RESPONSE TO CONSULTATION ON CLAUSE 10
OF THE DEREGULATION BILL – PARTIAL AUTHORISATION
OF INSOLVENCY PRACTITIONERS

THE INSOLVENCY SERVICE

Executive Summary

Introduction

1. The Institute of Chartered Accountants of Scotland (ICAS) is the oldest professional body of accountants and represents around 20,000 members who advise and lead business across the UK and in almost 100 countries across the world. ICAS is a Recognised Professional Body (RPB) which regulates insolvency practitioners (IPs) who can take appointments throughout the UK and we have an in-depth knowledge and expertise of insolvency law and procedure. .
2. ICAS's Charter requires it to primarily act in the public interest, and our responses to consultations are therefore intended to place the public interest first. Our Charter also requires us to represent our members' views and protect their interests. In the rare occasion that these are at odds with the public interest, it is the public interest that must be paramount.
3. ICAS is interested in securing that any changes to legislation and procedure are made based on a comprehensive review of all of the implications and that alleged failings within the process are supported by evidence.
4. ICAS is pleased to have the opportunity to submit its views in response to The Insolvency Service (the Service) consultation on the proposed amendments to insolvency licencing as set out within Clause 10 of the Deregulation Bill currently progressing through the UK parliament.

Comments on the proposals

Policy objectives

5. The proposals have been included within the Deregulation Bill, the objective of which is to "reduce the burden of regulation on business, civil society, other organisations (including public sector bodies) and individuals." This is an objective which ICAS supports and is generally beneficial for the economy and wider society. ICAS however do not agree that the proposals to allow partial licencing achieve the objective of the Bill and indeed it is likely that the introduction of partial licencing will significantly increase the burden of regulation particularly on business and recognised professional bodies that are required to regulate the activities.

Partial authorisation of insolvency practitioners

6. We do not agree with the proposals to allow partial authorisation of IPs. We are concerned that in doing so there is a significant risk that the public interest shall not be served and shall result in inappropriate advice being provided and a general lowering of professional standards.
7. An IP will often be brought in to provide advice to legal entities and individuals where a business is involved. It is therefore important that IPs are conversant in both personal and corporate insolvency regimes in order that an assessment of personal insolvency implications and corporate insolvency implications in relation to a particular scenario are able to be identified. There is therefore an inherent requirement to understand and be able to provide advice under both regimes.
8. In seeking views from our members in relation to the consultation carried out by the Service in March 2010, a significant percentage (75%) of respondents indicated that they did not agree that partial licencing would be in the public interest.
9. During the March 2010 consultation one of our members gave the example of a bankruptcy where the debtor ran a sole trader business which had 50 employees. It was a full trading entity which required to be wound-up and the IP commented that *"...it was one of the most technical cases I have dealt with in my career. I believe that a person with limited corporate experience and who had only passed the personal paper would not be suitably experienced to deal with such a technical case."*

10. In consulting with our members on the current proposals, one of our members gave a further example of a bankruptcy where he believed that a wider range of skills were necessary than mainstream personal insolvency requires. He commented *“I was appointed to a groundworks business (sole trader) with 35 employees. They had large contract balances and there was a period of trading between the warrant to cite and award and then from the award to the date I was made aware of the appointment and took control of the business. This resulted in a lot of litigation to recover balances from creditors who were paid post warrant to cite after directions from the court were obtained. The contract balances also demanded an understanding of the construction/civil engineering industry and the commercial negotiation that arises thereafter. Not forgetting all the employee claims and issues arising on appointment with third party goods etc.”* He concluded that this was a highly technical case and that a partially licenced IP who could only deal with individuals would not be appropriate to act as an IP in such a case.
11. Subject to our overall comments on partial licencing, should the proposals to introduce partial licencing be progressed we would suggest that these should be amended to restrict partial licenced IP’s in personal insolvency to appointments in which the debtor has had no involvement in a business in the previous 5 years.
12. We do not anticipate that there is likely to be significant uptake in partial authorisations. Many IPs work in smaller practices and do not specialise in one regime over another where they devote their time to insolvency work. In addition, a significant number of IPs undertake insolvency work as part of a general practice and do not devote all of their practice time to insolvency work. In both such scenarios we anticipate that IPs would not seek partial authorisation.
13. We would anticipate that the partial authorisation regime would result in increased costs of regulation for recognised professional bodies such as ICAS and that this is likely to have a negative impact on our members.
14. Introduction of partial authorisation would likely result in a requirement to amend most of our regulatory documentation, regulations, policies and procedures. For example:
 - The Insolvency Permit Regulations would require to be amended to allow for partial licencing– this would have cost implications;
 - The revised Insolvency Permit Regulations would require to be approved by the governance structure within ICAS, involving committee, constitutional panel, board and Council time and costs;
 - Our online Insolvency Permit application system would require to be amended to accommodate the different licence types – this would involve IT development and testing costs;
 - A partial licencing regime would potentially require more ‘policing’ to ensure that IPs with a partial licence (i.e. one type only) were not conducting activities ‘out with licence’;
 - Most monitoring and regulation documentation would require to be updated to reflect the proposed changes – this have IT and staff time cost implications;
 - Our website would need to be amended to reflect the changes to regulations, regulatory and monitoring approach;
 - Our monitoring approach and reporting would need be modified to reflect the partial licence regime.

We would anticipate that all Recognised Professional Bodies that authorise and regulate IPs would require to undertake similar work. We are unable to quantify the costs at this time, however based on the scope of work identified above, we consider that the costs would be substantial.

15. The Joint Insolvency Exam Board (JIEB) which administers the examinations used to qualify IPs may also require to incur set up costs for a new exam system and promotion of the new regime. This is likely to result in increased costs for exam candidates.
16. We do not believe that there will be a significant reduction in costs to individuals or sponsor employers in respect of training and qualification costs through the introduction of partial authorisation. While there may be some reduction in training and qualification costs we believe that this is likely to be limited due to the number of cross procedural matters which are invoked in both personal and corporate insolvency.
17. It is difficult to assess how many hours of study would be saved by an individual opting not to take JIEB examinations in either personal or corporate insolvency. A number of different course providers and routes of study are available and currently the number of hours involved in formal study courses vary substantially by provider. We would however suggest that due to the number of cross procedural elements, then the actual number of hours study being saved may not be as high as perhaps initially envisaged and would be unlikely to be a pro-rata reduction.
18. It is likely that JIEB training providers will require to invest in the design and implementation of new course structures which shall result in significant costs being incurred to do so.
19. We do not anticipate that the introduction of specialisation will result in any savings or benefits for existing IPs who already have decided to only take personal or corporate appointments. Continued Professional Development (CPD) requirements within ICAS require the IP to ensure that the IP undertakes a self-evaluation and undertakes appropriate CPD for their role. As a result there is no automatic requirement for an IP who for example chooses to only accept corporate appointments to undertake CPD in relation to personal insolvency matters.
20. It is our view that the current authorisation regime works and provides the right mix of professional knowledge and skill to best serve the public interest.
21. It is our view that the proposed creation of partial authorisations will increase the amount of regulation for the insolvency profession and will not enhance competition in the market place. It is possible that the creation of partial authorisations will have the opposite effect and create a small number of large personal debt 'factories' resulting in a reduction in personal debt insolvency providers.

Scottish Partnerships

22. Subject to our overall comments on partial licencing, we welcome the amendment to the draft Deregulation Bill (Clause 9) in relation to partial licencing and its interaction with Scottish Partnerships.
23. As a result of partnerships in Scotland being dealt with under the provision of the Bankruptcy (Scotland) Act 1985 in the same manner as individual insolvencies it is appropriate that there is no automatic prohibition on a partially authorised IP in personal insolvency acting in relation to an individual who is a partner in a partnership.
24. We would agree however that if partial licencing were to be introduced that, due to the likely complexities of the insolvency, this should remain to be dealt with by an IP who is fully authorised.

Removal of ability of an individual to act only in relation to voluntary arrangements

25. We believe that it is right to remove the provisions allowing an individual to act only as a nominee or supervisor of a voluntary arrangement.
26. The function of a nominee or supervisor is one which requires all the skills and diligence of an IP and there are risks attached to creditors and individuals who are not IPs in acting as a nominee or supervisor without the necessary skills to do so. It is therefore appropriate that only those who are authorised as an IP should be able to act as a nominee or supervisor in relation to a voluntary arrangement.

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