

RESTRICTED  
DEREGULARION BILL CLAUSE 11

<b>Title:</b> Removal of the Competent Authority provisions in insolvency  <b>IA No:</b> BIS0330  <b>Lead department or agency:</b> Insolvency Service  <b>Other departments or agencies:</b> Ministry of Justice (for Repeals Bill)	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 09/12/11		
	<b>Stage:</b> Final		
	<b>Source of intervention:</b> Domestic		
	<b>Type of measure:</b> Primary legislation		
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<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> AMBER
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Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£0.41m	£0.41m	NA	Yes
			Zero Net Cost

**What is the problem under consideration? Why is government intervention necessary?**

Insolvency practitioners (IPs) are regulated professionals who act as office holders to administer the estates of insolvent companies and individuals. There are eight regulators for the profession, seven of which have extensive powers to discipline the IPs they authorise. The Insolvency Act 1986 also provides for authorisation by 'competent authorities'. No bodies have applied for this role, and by default it is provided by the SoS. Competent authority regulation has only limited disciplinary powers. The SoS also acts as oversight regulator for all regulators, creating a conflict of interest between his oversight and direct regulation functions. Intervention is needed to remove the competent authority legislation.

**What are the policy objectives and the intended effects?**

- 1). Make regulation of the profession more standardised by removing the competent authority route which provides different powers of regulation compared to the other regulators
- 2). Remove the SoS from the direct regulation of IPs to remove the conflict of interest between oversight and direct authorisation roles.
- 3). Ensure that IPs currently regulated by the SoS are able to transfer to another regulator should they continue to meet the conditions necessary for authorisation.
- 4). Closure of the Insolvency Practitioners Tribunal will contribute to reduction in number of public bodies.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

This is a measure which can only be achieved by a change to legislation.

Removing the SoS from direct regulation, thereby making a change to the competent authority provisions as opposed to deleting the provisions, was identified as the preferred option in the Consultation. Subsequently, this was identified as a sub-optimal solution, as should an organisation want to become a competent authority in future, the non-level playing field of regulatory sanctions would remain. The original logic in the consultation that it would be prudent to maintain the Competent Authority provisions in case all the other regulators decided to withdrawal from regulation, and there was a need to appoint a new regulator, was ultimately rejected as being of very low probability.

<b>Will the policy be reviewed?</b> It will be reviewed. <b>If applicable, set review date:</b> 03/2018					
Does implementation go beyond minimum EU requirements?				N/A	
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		<b>Micro</b> Yes	<b>&lt; 20</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)				<b>Traded:</b> n/a	<b>Non-traded:</b> n/a

***I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.***

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Signed by the responsible Minister: \_\_\_\_\_ Date: \_\_\_\_\_

# Summary: Analysis & Evidence

Policy Option 1

Description:

## FULL ECONOMIC ASSESSMENT

Price Base Year 2011	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)			
			Low: Optional	High: Optional	Best Estimate: 0.41	
<b>COSTS (£m)</b>	<b>Total Transition</b> (Constant Price) Years		<b>Average Annual</b> (excl. Transition) (Constant Price)		<b>Total Cost</b> (Present Value)	
Low	Optional		Optional		<b>Optional</b>	
High	Optional		Optional		<b>Optional</b>	
<b>Best Estimate</b>	0.0		0.0		<b>0.0</b>	
<b>Description and scale of key monetised costs by 'main affected groups'</b>						
Cost to SoS IPs - One-off fees to become a member of another regulator - £4,000. These are total costs across all SoS IPs.						
<b>Other key non-monetised costs by 'main affected groups'</b>						
Cost to SoS IPs - Loss of 'prestige' from no longer being regulated by the SoS. Cost to SoS IPs - Possible rise in Professional Indemnity Insurance						
<b>BENEFITS (£m)</b>	<b>Total Transition</b> (Constant Price) Years		<b>Average Annual</b> (excl. Transition) (Constant Price)		<b>Total Benefit</b> (Present Value)	
Low	Optional		Optional		<b>Optional</b>	
High	Optional		Optional		<b>Optional</b>	
<b>Best Estimate</b>	0.0		0		<b>0.4</b>	
<b>Description and scale of key monetised benefits by 'main affected groups'</b>						
SoS IPs - Reduction in authorisation fees - £48,000 per annum						
<b>Other key non-monetised benefits by 'main affected groups'</b>						
Creditors - Better regulation of the insolvency profession leading potentially to greater returns						
Key assumptions/sensitivities/risks					<b>Discount rate (%)</b>	3.5
Numbers are based on assuming all SoS IPs are able to get authorisation from another regulator once SoS regulation is discontinued. Having questioned both SoS IPs and the regulators, we feel there are no barriers preventing all IPs moving across subject to continue to meet the conditions of authorisation.						

## BUSINESS ASSESSMENT (Option 1)

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>In scope of OIOO?</b>	<b>Measure qualifies as</b>
Costs: 0.0	Benefits: 0.0	Net: 0.0	Yes	Zero net cost

## Evidence Base (for summary sheets)

- Problem under consideration;

The regulation of insolvency practitioners (IPs), who are the professionals in the private sector who carry out insolvencies.

There are currently eight regulators of insolvency practitioners (IPs). Seven of the regulators are recognised as regulators under Recognised Professional Body (RPB) legislation. The legislation also allows the recognition of a regulator under the Competent Authority (CA) provisions. Currently the role of the 'competent authority' is being fulfilled by the Secretary of State for Business (SoS) as the legislation dictates that the SoS must fulfil this role if no other body is recognised as the competent authority. To date no other body has performed this role.

We would like to restrict the recognising of regulators to that through RPB legislation and do away with CA provisions.

This measure would affect the 66 IPs regulated by the SoS. This equates to around 4% of the total number of IPs.

- Rationale for intervention

The main rationale is government failure created by the current legislation.

The two different routes for recognising a regulator have disproportionate powers in regards to the sanctioning of insolvency practitioners. RPBs have a large range of sanctions at their disposal including license withdrawal, restrictions on an IPs future appointments and fines, as well as more corrective action such as plans for improvement or undertakings. Meanwhile a regulator recognised under the CA provisions, only has the power to either withdrawal the license of an IP which would be a disproportionate sanction in most circumstances or issue a non-binding improvement notice which is at the other end of the regulatory scale. As the RPB route for recognition best applies Hampton principles, the rationale is to remove the CA provisions thereby removing a barrier to a level playing field in the regulation of IPs. Additionally, as the SoS is also the oversight regulator of all IP regulators and is currently exercising the CA function, as no other body has applied to be a CA, deletion of the CA provisions will also remove the conflict of interest the SoS faces as both a direct and oversight regulator.

A second rationale for intervention is an information failure rationale in that individual IPs, currently licensed by the SoS, may be unaware of the cost savings they could make through switching their authorisation to one of the RPBs. In addition we found some support from a small survey we conducted of SoS IPs that there is inertia to switching authorisation body amongst some IPs, which goes beyond any actual benefits the IP may get from being regulated by the SoS.

- Policy objective

- 1). Make regulation of the profession more effective and standardised by removing the competent authority route for authorisation. This will reduce the potential for regulatory arbitrage.
- 2). Remove the SoS from the direct regulation of IPs to remove the conflict of interest between the SoS's oversight and direct authorisation roles.
- 3). Ensure that IPs currently regulated by the SoS are able to transfer to another regulator should they continue to meet the conditions necessary for authorisation.
- 4). Removing the CA provisions will lead to the closure of the Insolvency Practitioners Tribunal (IPT), which will contribute to the Government objective of reducing the number of public bodies.

Ensuring IPs are able to continue to practise (objective 3) is being pursued because we want to ensure SoS IPs are not forced out of business. It is a requirement of s389 of the Insolvency Act 1986 that IPs are authorised so to act and this will continue to be the case. Simply removing SoS

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authorisation would in itself mean that the IPs concerned were no longer authorised and would be unable to continue to practise under threat of prosecution. We therefore wish to ensure that IPs currently authorised by the SoS can migrate to a new authoriser/regulator (objective 3). Ensuring that the affected IPs can migrate to a new authorising body will also remove the risk of legal challenge. Since IPs have to be authorised to act, IPs unable to practise because of the repeal of SoS authorisation could argue that their rights under Article 1, Protocol 1 to the European Convention on Human Rights (protection of property) have been breached. There is case law to the effect that Article 1, Protocol 1 includes the right to practise one's profession. This objective is being pursued by non-legislative means. Conversations with the seven RPBs have led us to believe that this will be delivered by virtue of five of the RPBs being able to authorise former SoS IPs.

- Description of options considered

**Option 0: Do nothing**

The cost and benefit of this option are both zero.

**Option 1: Repeal of the Competent Authority Provisions**

Repeal of the competent authority provisions and ensuring that IPs currently recognised by the SoS can continue to receive authorisation through transferring to another regulator (cost-benefit analysis below). On repeal of the competent authority provisions, a 12 month transition period will start for existing SoS authorised IPs at the end of which authorisation will be withdrawn.

SoS authorisations are annual from the date at which authorisation was initially given. In that final 12 month period, on the anniversary of their authorisation, an existing SoS IP can renew their authorisation until the cut-off date for the transitional expiring – e.g.: authorisation for less than a year. The policy was designed in this way for fairness reasons, so that all existing SoS IPs can continue to be authorised until the final cut-off date.

**Option 2: Removing the Secretary of State from direct authorisation of IPs**

Achieved by amendment of the competent authority provisions whilst leaving the ability for another body to become the competent authority. This option would also need provision to allow SoS IPs to transfer to another regulator.

Removal of the SoS from direct authorisation would have the same economic impacts as option 1, therefore the costs and benefits of options 1 and 2 are the same. Given that no organisation has applied to become a competent authority since the introduction of the regulation of IPs in 1986, we consider it safe to assume that the probability is nil, therefore leading to the expectation of 0 additional costs and benefits of this option.

Option 2 has been rejected due to policy considerations. By holding open the possibility that some other body could become the CA, it means that unless reforms are made to the powers a CA has, we could not guarantee that this levelling of the playing field between regulators would be permanent. As we feel there are no benefits to having the CA provisions left open, the preferred route is to dispense with them altogether when the SoS is removed from direct regulation. In the Consultation ([http://www.bis.gov.uk/assets/bispartners/insolvency/docs/insolvency%20profession/consultations/ipc\\_onsult.pdf](http://www.bis.gov.uk/assets/bispartners/insolvency/docs/insolvency%20profession/consultations/ipc_onsult.pdf) - see paragraphs 4:10-4:15 for discussion) we had advanced the argument that for prudential reasons it would be good to maintain the Competent Authority provisions in case all RPBs fell away and there was a need to find a replacement regulator at short order. We now consider this possibility so remote as to not merit its consideration, and in any case, mitigating action could be taken if we became aware that this was likely to happen.

**Costs/Benefits for Option 1**

The single monetised value is the cash savings in annual authorisations that SoS IPs can expect from moving to another regulator.

The methodology for calculating the annual cost saving to IPs is to compare the current cost of SoS authorisation, with the likely destination for where the IP would move. There are no cost savings to the Insolvency Service as the Service operates a system of full cost recovery for its authorisation services of IPs. Savings from no longer carrying out authorisation will be offset by the loss of income.

There are currently 66 IPs regulated by the SoS. The current cost of SoS authorisation is £2,950 per IP, with another £300 charged to each IP to cover the cost of SoS oversight regulation. Therefore although SoS IPs pay £3,250 to the Insolvency Service only £2,950 is to cover the cost of authorisation.

Of the 7 other regulators, the Law Society (LS) and Law Society of Scotland (LSS) are not able to accept appointments from former SoS IPs. In the case of the LS this is because of the requirement to be a practicing solicitor, for the LSS, because of the requirement to be a practicing Scottish solicitor. None of the 66 IPs regulated by the SoS are practicing lawyers.

The five other regulators: Insolvency Practitioners Association (IPA); Institute of Chartered Accountants England and Wales (ICAEW); Institute of Chartered Accountants Scotland (ICAS); Chartered Accountants Regulatory Board (CARB); and the Association of Chartered Certified Accountants (ACCA), have all indicated that there would be no bar to applications from IPs currently authorised by the SoS, though the fitness and propriety of applicants would be considered on a case by case basis.

**Table 1: Proportion of IP appointments and breakdown of costs for the five regulators able to authorise former SoS IPs**

	Name of Body					Total
	ICAEW	IPA	ACCA	CAI	ICAS	
1 No. of IPs Authorised as of 1st January 2011	686	495	179	35	106	1501
2 Proportion of IPs authorised by five regulators	46%	33%	12%	2%	7%	100%
3 Estimated Annual fee for authorisation	£1,798	£2,990	£1,857	£1,626	£1,002	-
4 Additional annual non-member fee	£156	£0	£0	£295	£0	-
5 Total Annual Fee	£1,954	£2,990	£1,857	£1,921	£1,002	-
6 One-off insolvency affiliate fee	-	-	-	£375	£656	-

Table 1 sets out the data for both the proportion of IPs each of the five bodies currently authorises (row 2), but also sets out the fees an SoS IP could expect to pay in being regulated by one of the five bodies. The relevant lines here are the total annual fee (line 5) and any fees from becoming an affiliate member (line 6). As SoS IPs would become non-members/affiliate members of the various bodies, some of the bodies charge a one-off fee to acquire this status.

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There has been a degree of simplification in estimating what the average authorisation fees will be from some of the bodies. For instance, ICAEW charge authorisation fees based on the gross fee income an IP generates. We do not have data for gross fee income generated by SoS IPs so have estimated an annual fee averaging the top and bottom of the authorisation fee scale of ICAEW. Meanwhile we have used the fee ICAS will charge former SoS IPs in their first year of moving to ICAS as the annual fee. In subsequent years the fee will vary according to gross fee income earned by an IP, but for simplicity this has been ignored.

We assume that the IPs move to one of the five available bodies in proportion to their share of memberships, e.g.:- 46% are assumed to move to ICAEW.

This leads to an estimate of £ for the average annual authorisation fee from switching, accompanied with an average one-off authorisation fee of £55.

As Table 2 shows, this leads to an average saving of £734 in the annual authorisation, accompanied by a rise of £55 in the one-off fee from SoS IPs moving to a new authorisation body.

**For all 66 IPs this equals an annual saving of £48,453 against paying an initial fee of £3,635.**

**Table 2: Difference in cost of authorisation**

	<b>Annual fee</b>	<b>One-off</b>
Cost of SoS authorisation	£2,950	£0
Cost of switching authorisation	£2,216	£55
<b>Total annual savings per IP</b>	<b>£734</b>	<b>-£55</b>

### **Non-monetised costs**

We have identified a number of additional non-monetised costs potentially faced by IPs:-

- With the greater availability of sanctions available to the RPB regulators, SoS IPs moving to one of the five regulators could expect to be subject to greater sanctioning in future. This is because the SoS sanction to remove an authorisation would only be used if there had been a very serious misdemeanour, whilst the RPBs' greater range of sanctioning makes it far more likely they will use these tools. Overall however we do not think there will be a net cost to business as greater sanctions against IPs should be met by better standards amongst IPs, which should lead to better returns to creditors.
- It may be necessary for the IP to increase the level of their professional indemnity insurance (PII) on moving to one of the RPBs. PII insures the IP against negligence and resulting claims. For instance one of the RPB's advise that the minimum level of PII is 25 times the largest case fee charged by an IP. As this is thought to be larger than the coverage some SoS IPs are currently covered for, this will lead to a rise in the insurance premium.
- We also undertook a small survey of SoS IPs for which we received four replies (40% return rate). This was to investigate whether there were other benefits IP's thought they received from being authorised by the SoS, and which would be lost if SoS authorisation were removed. These include:-
  - Prestige of SoS regulation – A number of the respondents felt that regulation by the SoS was considered more rigorous amongst the public who would perceive the RPBs as only looking after their own members.
  - Cost of getting used to the regulatory systems of a different regulator
  - Expected likelihood of authorisation in complicated authorisation cases – There was a perception that the SoS was better able to deal with authorisation cases where the IPs circumstances were not straightforward due to more flexibility in the SoS's authorisation requirements
- Of the three, we feel losing the loss of prestige of SoS regulation will represent the most significant loss of value to an IP. However we think this is unlikely to approach the over £700 annual savings an IP could make from switching. It is also questionable whether members of the public would routinely know the identity of an IP's regulator, or indeed have a view on the relative impartiality or quality of each of the different regulators.
- Having spoken to the RPBs about their systems, we do not think there will be significant costs in getting used to a new regulator as all systems are quite similar. In addition the five RPBs have indicated they see no barriers to authorising any of the current SoS IPs so do not consider there to be any value attached to the flexibility of the SoS's authorisation requirements.
- A number of other responses to the survey were not suggestive of actual costs but were suggestive of inertia. This included:-
  - Reject the idea of the need to move to another regulator.
  - Firm has always used the SoS regulatory route.
- Finally all survey respondents felt there were no barriers to them moving to another regulator were it to be required.

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- Given the IP survey findings and the discussions with the RPBs about their authorisation procedures, we do not consider that any non-monetarised costs to the IP of being forced to find a new regulator will be significant.

### Transition Costs

- To estimate the scale of any transition costs, we compared the processes that an IP SoS would need to undertake to continue to be authorised by the SoS and that which would be required to move to one of the five regulators open to the SoS IPs.

Process for ongoing SoS authorisation:-

- This involves the IP returning a regulation 11 form which includes details of:-
  - A). Insolvency case numbers – including cases open at start of authorisation period and at end of period.
  - B). Case details – including hours spent on individual cases.
  - C). Continuing professional development details
- Payment of fee
- The time taken for an IP to do this would depend on the quality of the records the IP has kept during the year, and whether they are signed up to the electronic system. In addition to this requirement, a small number (14) of SoS IPs still need to provide application forms, although this is being phased out.
- We estimate that 2 hours should be on average long enough to complete the process.

Process for moving to one of the five available RPBs:-

- The different bodies have different processes but general requirements on the IP are:-
  - Completion of an application form:- Estimates range from 15 minutes (IPA) to 2hours (ICAS), although not all regulators provided an estimate.
  - Amend the level of PII coverage (if necessary) and provide PII and insolvency bond details to their new regulator.
  - Payment of fee
  - Additional information, such as regulatory history, although in the case of most regulators, this is sought directly from the SoS.
  - The IP would generally not have to provide further information, unless the references from the SoS were unsatisfactory.
- Having compared the processes, we do not think there will be any additional net transition costs from moving regulator, indeed several of the regulators have indicated that the application process, as shown above, and which is the main part of the process, will be less than the two hours we think will be needed to gain SoS authorisation.

### One-in one out

- The measure is in scope as it involves a forced change in regulator for those IPs currently regulated by the SoS. We estimate that the measure will save each IP money, both in terms of the annual cost of regulation and in the transition costs of moving regulator (or at the worst not lead to net transition costs), as evidenced above.
- However, we can not rule out the possibility that there is some additional unvalued benefit (such as the perceived benefit one of the surveyed IP says they get from being regulated by the SoS) that offsets these savings, and which makes it rationale for the SoS IPs to continue to choose to

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be regulated by the SoS. As this is this case, the measure is recorded as being in scope but with zero net cost.

### **Wider Impacts**

#### **Equalities Impact**

- We do not expect the policy to have a disproportionate impact on any protected characteristic as a result of the removal of direct authorisation as all SoS IPs will be impacted the same. The IS does not hold significant equality data on authorised IPs. The only data is on the IPs sex, where nine are women and 57 are men.

#### **Competition Impact**

- We expect the policy to have a positive albeit negligible impact on competition in the IP market as it will enable consistent sanctioning of IPs by the regulators, and thereby remove a competitive advantage that SoS IPs may have enjoyed.

#### **Small Firms Impact**

- The impact is limited as only a small proportion of IPs are authorised by the SoS. A majority of these are micro firms (56%), but the impact should be positive on them, given that forcing the IPs to move regulator should save them money through lower annual authorisation fees and no expected transition fees.

**Table 3: Size of firm**

<b>Size of Firm (No. of employees)</b>	<b>Number of IPs / Proportion of SoS IPs</b>
>10 (Micro business)	35 / 56%
10-20	8 / 13%
20-50	6 / 10%
50-250	2 / 3%
250+	11 / 18%

Data is available for 62 of 66 SoS IPs

#### **Human Rights**

- As we have provided for the onward transition of SoS IPs to five other regulators, subject to the IPs meeting conditions of authorisation, we do not think there is any compromising of an IPs right to practice ones profession. This will avoid any possibility of compromising Article 1, Protocol 1 of the European Convention on Human Rights, where case law exists, that this protocol can include the right to practise one's profession.

#### **Summary and preferred option**

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- Option 1: Repeal of the Competent Authority Provisions, which will remove the SoS from direct authorisation of Insolvency Practitioners and prevent any future body carrying out the competent authority powers. All IPs will continue to be able to be authorised, by moving to one of the five regulators able to accept their authorisation.
- On repeal of the competent authority provisions, a 12 month transition period will start for existing SoS authorised IPs at the end of which authorisation will be withdrawn.
- Authorisation costs are expected to fall £48, 453 per annum across all SoS IP. Initial fees of £3,635 will be payable by SoS IPs on transfer.