Northern Ireland Assembly

Committee for Enterprise, Trade and Investment

OFFICIAL REPORT (Hansard)

Insolvency (Amendment) Bill: Insolvency Service

13 January 2015

NORTHERN IRELAND ASSEMBLY

Committee for Enterprise, Trade and Investment

Insolvency (Amendment) Bill: Insolvency Service

13 January 2015

Members present for all or part of the proceedings:
Mr Patsy McGlone (Chairperson)
Mr Phil Flanagan (Deputy Chairperson)
Mr Steven Agnew
Mr Gordon Dunne
Ms Megan Fearon
Mr Paul Frew
Mr Paul Givan
Mr William Humphrey
Mr Danny Kinahan
Mr Máirtín Ó Muilleoir

Witnesses:

Mr Richard Monds	Insolvency Service
Mr Jack Reid	Insolvency Service

The Chairperson (Mr McGlone): Briefing the Committee today are Mr Richard Monds, director of insolvency services, and Mr Jack Reid, deputy principal of insolvency services. You are both very welcome indeed. Thank you for being with us again. We have taken more evidence since your last presentation. You probably appreciate that, and you may have seen Hansard or listened to the issues that came up during our interrogation when we were trying to extrapolate just what this means. Have you further issues to add or something more to say to us today?

Mr Richard Monds (Insolvency Service): Nothing in great detail, Chair. The key developments since our last presentation relate to Mr Allister's request at the Bill's Second Reading that a statutory code of conduct be considered for inclusion in the Bill. We highlighted at that last meeting that there was provision in the Small Business, Enterprise and Employment Bill, which is going through Westminster, to introduce regulatory objectives for the recognised professional bodies that authorise insolvency practitioners (IPs). It had been our intention to introduce that provision in the future insolvency Bill. However, the Minister has now decided to include that in the current Bill, and she wrote to the Committee and Mr Allister before Christmas to advise of her intention to do so. That is the last major development since we last gave evidence here in November.

The Chairperson (Mr McGlone): That is grand. One of the things that we dealt with at considerable length, although for me it was a wee bit inconclusive, was the partial authorisation to do this or that type of work. Can we get a few clarifications on that? PwC in particular believed that partial authorisation would have a negative impact on businesses and individuals seeking financial advice. You have probably read the evidence. I have looked at the evidence, and at this point in time, I still do not know, because we have no other precedent to go on. It is not fully operational in Britain, so we do

not know whether it is negative, positive or something else or whether there should maybe be no change. Have you done any further research on whether there any other jurisdictions where that type of licensing has been carried out to establish whether it will have a positive effect, a negative effect or no effect?

Mr Monds: We are not aware of it happening in any other jurisdictions. As we mentioned the last time, our major impetus in introducing that is to retain parity with what is happening in GB. The legal advice that we have is that, as set out in the EU services directive, if the legislation has been changed in one part of the jurisdiction, every part of that jurisdiction should follow suit. That is the advice that we are getting on that, so we really have no choice other than to follow suit.

Where the practical effect is concerned, I know that PwC and the representatives from the Chartered Accountants Regulatory Board (CARB) and some of the other professional bodies across the water have identified that it may cause problems, in that it may be more time-consuming or cost more money.

The introduction of the partial authorisation was to allow people to specialise in one area or another. People are not being forced to choose one or the other; they can still go down both routes. I know the body that sets the exams. There are three exams for the full authorisation — two in corporate and one in personal — so I presume that if somebody just wants to specialise in personal, they take the one exam and can follow that route if they are dealing only with personal and consumer bankruptcies. If somebody wants to practice on the corporate side, they can take the two other exams. If they want to have the full authorisation to do whatever cases, they can do all three. I presume that that is how things will be.

The Chairperson (Mr McGlone): That probably leads to my first question. Can people be authorised to deal in both?

Mr Monds: That is the current process.

The Chairperson (Mr McGlone): But under the new process —

Mr Monds: Under the new process, you can continue to be authorised to do both.

The Chairperson (Mr McGlone): You can?

Mr Monds: Absolutely. I imagine that probably 60%, 70%, 80% or 90% of people will still wish to do that, so they are qualified to do both sides.

The Chairperson (Mr McGlone): So, the only obstacle or the only criterion is that you do the examination.

Mr Monds: That is right. Currently, there are three papers, two of which relate to corporate and one that relates to personal.

The Chairperson (Mr McGlone): OK. You mentioned the legal advice that you have received about the read-across of the legislation and how it should be similar or the same, basically. Who is that legal advice from?

Mr Monds: That is from our own Departmental Solicitor's Office (DSO).

The Chairperson (Mr McGlone): That is OK. I think that you have answered my second question. Is it the case that anybody who is authorised in both can practice in both?

Mr Monds: That is right.

The Chairperson (Mr McGlone): Obviously, firms will be free to choose who they want to go to.

The Clerk has just reminded me that an insolvency practitioner firm will be able to employ people who are qualified in both.

Mr Monds: Yes.

The Chairperson (Mr McGlone): Clearly, both firms that were with us giving evidence were good, professional firms and are well known throughout the region for that. Obviously, they could just continue the way they are —

Mr Monds: Absolutely, yes.

The Chairperson (Mr McGlone): — and they will have people within their employ who are doing things in exactly the same way as at present. The conclusion was that there would be very few beyond that who would do things differently. In other words, it would be more or less the same. Is that the conclusion that you have come to?

Mr Monds: It is hard to say until we actually see —

The Chairperson (Mr McGlone): Until it happens.

Mr Monds: For example, some of the larger companies may wish to have people specialise in one or the other, whereas a small country firm somewhere in Northern Ireland with only one or two practitioners may need to be able to cover all areas or one person may need to cover both. They will probably continue doing the corporate and the personal side of things, so they may choose to be qualified for both.

The Chairperson (Mr McGlone): But that is their choice.

Mr Monds: That is their choice; absolutely, yes.

The Chairperson (Mr McGlone): You did legal research about the applicability of this. Are you satisfied from the legal advice that there must be read-across?

Mr Monds: That is right. Unless there are good public-interest reasons that one jurisdiction should be different from others within that national state, there should be read-across. Someone who is authorised in one area to do one thing should be authorised in all areas of that particular service unless good reasons have been identified —

The Chairperson (Mr McGlone): For it not being the case.

Mr Monds: Yes.

The Chairperson (Mr McGlone): Yes — unless there is an overriding reason, which there is not.

Mr Frew: I will target my questions on clause 1. The participants in the insolvency proceedings will not necessarily have to be in the same room, so it can be done through technology, whether that be videoconferencing, phone calls or whatever. That seems to be the future, and, of course, we need to embrace it.

Even some of the contributors seem content with that, albeit that they would say to us that there needs to be a consistency of approach so that it does not have a competitive aspect whereby some companies may well be uncompetitive. How do you see that working in practice? What was in your mind's eye when that clause was being written?

Mr Monds: Again, we are taking this legislation from what is going on across the water, so in talking about how it will come across in practical terms, I would not be awfully sure how the technology would work. Once we have the legislation in place, there will be subordinate legislation that will be at a lower level and that will identify at lower, more practical levels what will have to be in place to allow these things to happen.

At this stage, we would not really be entirely sure. I think I am right in saying, Jack, that the subordinate legislation in GB has not been completed either, so we are slightly in the dark about what that will be. Our hope will be that that will provide more detail on the higher-level legislation in clause 1.

Mr Frew: So, would that be like a code of conduct, or rules of engagement even, for the meetings?

Mr Monds: I would expect it to identify what safeguards may or not be in place. Obviously, whenever we are talking about new technologies, we find that there are a lot of things that will have to be included, such as safeguards, password protections and firewalls, to facilitate electronic meetings depending on what software is being used and whether that is sufficient to meet industry standards. So, that element will have to be considered as part of the software and of the electronic and technology side of things.

We have the likes of electronic banking, although things like that would not be defined in legislation. It is down to the technologies that are available to ensure that they are secure and allow people to have confidentiality if conversations are being had electronically or documentation is being transferred electronically. It is down to the integrity of the systems that are being used.

Mr Frew: Are you confident that whatever needs to go in to the subordinate legislation will safeguard against identity fraud so that the people you are communicating with in a meeting will definitely be those people?

Mr Monds: They are still working on the subordinate legislation in GB.

Mr Jack Reid (Insolvency Service): There is a requirement in the clause for anyone who is proposing to hold a meeting remotely to ensure the identification of those attending and the security of any electronic means that are used to enable attendance.

Insolvency practitioners are subject to monitoring by their recognised professional bodies. One thing they would be looking at would be to ensure that they were adhering to best practice if they were conducting meetings through various technologies such as videoconferencing, teleconferencing or the use of computers.

Mr Frew: The Bill makes provision for proceedings to be held in remote areas or different places. How will it be ensured that there is enough time, or an acceptable amount of time, to complete the logistics for that meeting to be held somewhere remote? There is also the issue of using technology in the global sphere if you were talking to people in, say, Venezuela or India. Do you have in your head an acceptable amount of time that it would take to set up such a meeting?

Mr Reid: There are requirements in the existing legislation for periods of notice to be given for meetings. Those requirements will remain in place and will apply in the case of electronic meetings. Some of them are quite generous periods of time.

Mr Frew: What do you think would be an acceptable period of time? Is that in the Bill? For instance, would two weeks be acceptable notification for the participants and to get the logistics set up for such a meeting?

Mr Reid: I would have thought that it would be something of that order. It would not be appropriate to specify a time period in the Bill because time periods for the individual requirements for meetings are specified elsewhere in the legislation, so the two could be in conflict.

Mr Dunne: Thanks, gentlemen, for coming in again to talk about this issue. Clause 3 deals mainly with the removal of the need for annual meetings for members and creditors in voluntary liquidations. From the evidence we got from the professionals, it seems that they were certainly keen on the proposal and to run with it right away and for that to apply not just to new cases after the changes come in. What is your view on that, and what transitional arrangements will be put in place to manage it in the meantime?

Mr Reid: The plan is that the requirement to hold a meeting to present reports on progress in voluntary winding-ups would be replaced by a requirement to issue a report on progress. We see that as having benefits because such meetings tend to be poorly attended. It would reduce the cost of holding meetings that are poorly attended or not of any benefit.

There are transitional provisions in schedule 1 to the Bill. They provide that the amendments made to articles 79 and 91 of the Insolvency Order, that is, a replacement of the need for a meeting with a progress report, will:

"not apply in respect of a company in voluntary winding up where the resolution for voluntary winding up was passed before the day on which section 3 comes into operation".

So, if a winding-up is already in progress at the date that clause 3 is commenced, the requirement for a meeting to be held will remain. It is only if the winding-up was initiated after clause 3 is commenced that it will no longer be necessary to hold meetings and it will be sufficient for the liquidator to issue a report to the creditors on progress with the winding-up.

Mr Dunne: So, instead of the meeting, there will be reports. What about the point I made about the professionals wanting it to come in to play right away, so that, rather than waiting for the new cases under the new clause, it applies right away to all cases?

Mr Reid: Again, we are following the line taken in the GB legislation. I think that it is general convention in the GB legislation that they do not change course midstream, if you like. I think that the principle that they apply is that, where a procedure is under way, the creditors and everyone involved will expect it to be conducted in accordance with existing law and would look on it as bad practice to suddenly find that they are confronted by a different procedure than the one they had expected when they set out.

Mr Dunne: So, are you supportive of the idea of it applying only to new cases after the introduction of clause 3?

Mr Reid: There is an argument against retrospective legislation. It is looked on as bad law to apply new law to old cases. While this is not an exact analogy, there are comparisons when, as I say, a procedure is under way and the creditors expect that it will conducted in a certain manner but it suddenly changes. That could be looked on as bad practice.

Mr Dunne: Fair enough. Do you see any practical issues in doing away with the meetings for all new cases?

Mr Reid: No, I do not, because creditors will still have an opportunity to make representations to the insolvency practitioners who are in charge of proceedings. If they have any sense, they can still write to the practitioner. Insolvency practitioners are always subject to the supervision of the court, so there could be recourse to the court if a creditor had a grievance against what was happening, such as the speed with which the case was being conducted.

Mr Dunne: I take it that the reports are open to all parties.

Mr Reid: The reports will be issued to all creditors, yes.

The Chairperson (Mr McGlone): Could you clarify the rationale behind the transitional arrangements?

Mr Reid: Transitional arrangements are always put in place to govern the situation where a provision is commenced while a case is in progress.

The Chairperson (Mr McGlone): Could you expand on that for the average five eighths here?

Mr Reid: The transitional provisions determine or clarify which law is to apply to a case in progress, so that means whether it is the current law or the law that is replacing the current law.

Mr Monds: It just sets out, when a case is ongoing, at what point the new law will apply to that case. Schedule 1 states:

"The amendments made ... by section 3 do not apply in respect of a company in voluntary winding up where the resolution for voluntary winding up was passed before the day on which section 3 comes into operation."

So, it really defines the relevant date in that case, which will decide whether it is the old or the new legislation.

The Chairperson (Mr McGlone): But is it that the applicable date applies to the case and does not apply universally to all cases that are laid at that point in time?

Mr Monds: It depends at what stage each case is.

The Chairperson (Mr McGlone): So, does it depend on the advancement of the case?

Mr Monds: Yes, and if the resolution for voluntary winding up was passed before the day on which the law comes into place, the old rules apply. If it is after that, the new rules apply.

The Chairperson (Mr McGlone): Who makes that determination? I take it that it is not done in consultation with the Department.

Mr Monds: No, it is done by the administrator or the liquidator.

The Chairperson (Mr McGlone): So, is it exclusively their call?

Mr Monds: When they make that decision, it will depend which legislation is applied.

The Chairperson (Mr McGlone): That is grand. Thank you.

Mr Flanagan: I want to talk to you about clause 14. Practitioners have told us that it is their understanding that people will not be able to register both for individuals and companies, but you are telling us that that is not the case. Why is there a misunderstanding between the Department's position and those practitioners in this area?

Mr Reid: I will look at what the Bill says. First, proposed new article 349A, which has been inserted into the primary legislation, states that:

> *"'full authorisation' means authorisation to act as an insolvency practitioner in relation to companies, individuals and insolvent partnerships".*

Proposed new article 350 states that:

> *"The Department may by order declare a body which appears to it to meet the requirements of paragraph (4) to be a recognised professional body which is capable of providing its insolvency specialist members with full authorisation or partial authorisation."*

So, the option is there, clearly, for the Department to recognise a professional body that can provide insolvency practitioners with both full or partial authorisation. I do not see that there should be any misunderstanding about that. I think that the legislation on it will be clearer. Furthermore, proposed new article 350(3) states that:

> *"An order under paragraph (2)"*

— that is partial authorisation —

> *"must state whether the partial authorisation relates to companies or to individuals."*

So, it is clear that there will be two categories of authorisation. One will be full authorisation, which is that the person authorised will be able to deal with companies and personal insolvency, and there will be a second category of limited partial authorisation, whereby the person will be able to deal only with either companies or individuals.

Mr Flanagan: Have you read the Hansard report of the briefing that we received from the practitioners before Christmas?

Mr Reid: Yes, I have.

Mr Flanagan: Is there any justification, for want of a better word, for the concerns that the practitioners raised with us about partial authorisation and full authorisation, or do you think that they have misread the situation?

Mr Reid: Which particular concerns are you referring to? Is it the existence of the right to be authorised to deal with both types of case, or is it the concerns that they raised about the consequences of allowing partial authorisation? Which are you referring to?

Mr Flanagan: It is our understanding that they are saying that practitioners could not perform both and that it had to be either/or. The briefing documents and the evidence that they gave us said that it had to deal either with individuals or corporate entities. They told us that you can deal with only one or the other, but you are now telling us that that is not the case. I am trying to figure out why those involved in delivering the service are saying one thing and the Department and the legislation appear to be saying something else.

Mr Reid: Can I clarify that? If an insolvency practitioner is partially authorised, he will indeed be able to deal only with either companies or individuals; he will not be able to deal with both. However, if an insolvency practitioner chooses to be fully authorised and completes the examinations required to deal with companies and individuals, it will be perfectly possible for him to be authorised to deal with both. His authorisation will not be limited to dealing with either companies or individuals. Again, I refer to proposed new article 350(1), which states that the Department will be able to make orders declaring bodies to be recognised as being:

> *"capable of providing its insolvency specialist members with full authorisation or partial authorisation."*

There would be no point in them being recognised for the purpose of providing their members with full authorisation if that did not entitle their members, as the words say, to full authorisation, that is, being authorised to deal with companies and individuals and, indeed, partnerships. That is what full authorisation, as defined in proposed new article 349A, means. It states:

> *"'full authorisation' means authorisation to act as an insolvency practitioner in relation to companies, individuals and insolvent partnerships".*

The Chairperson (Mr McGlone): So, Mr Reid, to clarify: the only potential obstacle for a professional who is applying from partial authorisation to full authorisation would be that individual's own skill set, as in qualifications.

Mr Reid: Yes, after relevant examinations.

The Chairperson (Mr McGlone): That is OK. Thank you.

Mr Flanagan: I am trying to figure out why there is a difference in opinion between the practitioners and the legislation. Have you attempted to deal with the problem whereby the practitioners think that you cannot be registered as both?

Mr Monds: It has not really cropped up as a problem. From reading Hansard, it did not strike me that their view was that they just thought that you could do one or the other. I think they see it as watering down the presence, as it were, whereby an insolvency practitioner must be qualified in both personal and corporate. I think that they consider it being split into two, whereby, potentially, someone can just do one or the other rather than both. I think that they see it as a potential watering down of the expertise. I am not 100% sure. I have not read the Hansard extract with that thought in mind.

This consultation has been through GB and through us as well, so I think that the practitioners should be aware of what the legislation says. I think that their concerns are around the splitting of the qualification into two and, potentially, around the monitoring of that by the recognised professional bodies. They consider that it may cost more money or that more assistance may need to be put in place to monitor this. That may or may not be the case. I think that that is what their concerns are around. That is my understanding, and I may not be correct in that.

Mr Flanagan: So, from your reading of the Hansard report of the session with the practitioners before Christmas, you do not think that it is their understanding that people can do both. That was certainly the vibe that I was getting.

Mr Monds: I did not read it with that in mind. I will need to look at it again in more detail because I think that the more that you are familiar with these things you presume that people are aware of the situation. Certainly, the gentlemen will have been aware from the GB consultation and our consultation exactly what the differences would be. I did not read that in Hansard, and I will need to look at it again with that in mind to see exactly what they were saying.

Mr Flanagan: I put it to them that there was a possibility that there could be three different types of options on offer. There is the option where you deal solely with individuals, the option where you deal solely with companies and the option where you deal with both. They seemed to be quite happy with that. Mr Cavanagh said:

> *"In principle, I would not have any objection to that. I feel that the dual licence is a huge advantage."*

So, I am trying to figure out why the practitioners are under the impression that organisations will not be able to be fully authorised and what efforts you have made to deal with that confusion.

Mr Reid: I am trying to find the relevant part in Hansard, but I am not having any success. Can you give me any indication of where it might be?

Mr Flanagan: Towards the end. It is probably on the last page. I have an electronic copy here that lets me type in "clause 14" to find all of the references to it.

Mr Reid: You asked:

> *"Have you worked with RBS?"*

Mr Flanagan: It is before that.

Mr Reid: You said:

> *"That deals with the work of RBS's global restructuring group".*

Is it before that?

Mr Flanagan: It is way before that.

Mr Reid: Is it where you say:

> *"Maybe we could tease that out. We have to find a solution that meets everybody's needs: meets the needs of people here but complies with legislation and with what DETI wants to achieve."?*

Mr Flanagan: It is two or three paragraphs above that.

Mr Reid: Yes. It is where you ask:

> *"What if the law were worded in such a way that it offered the existing dual system and the specialisms that DETI has proposed? What if there were three types of licences: one for individual, one for corporate and a dual licence?"*

That is what there will be. You ask:

> *"What is your opinion of that?"*

Mr Cavanagh replies:

"In principle, I would not have any objection to that. I feel that the dual licence is a huge advantage. As I outlined, in our work, we find that having a dual licence is a very distinct advantage. CARB carried out a check and found that there was not a big appetite for individual-only licences ... I would not have the competency to deal with small consumer debt, and a specialism would be an advantage".

That is what the legislation clearly provides for, and I cannot understand why anyone would think differently.

Mr Flanagan: Can I suggest that maybe you should go and talk to those who were here presenting evidence, and try to clarify the situation between all of you so that we all know what the story is? If we are taking evidence, we want to make sure that we are getting an actual reflection of the views out there.

Mr Reid: Can I make one more point?

Mr Flanagan: Yes.

Mr Reid: It is concerning article 350, which is to be inserted into the Insolvency (Northern Ireland) Order 1989 by clause 14. Actually, I should be speaking about clause 14(7), which states:

"An order under Article 350(1) of the Insolvency Order (recognised professional bodies) made before the coming into operation of this section is, following the coming into operation of this section, to be treated as if it were made under Article 350(1) as substituted by subsection (4) of this section."

This means that all professional bodies that regulate insolvency practitioners at the moment are recognised by the Department for the purpose of granting full authorisation to the insolvency practitioners to deal with companies, individuals and partnerships. There is no such thing as partial authorisation under existing law. However, clause 14(7) states that if a body has been recognised in that manner under existing law, it will continue to be recognised for the purpose of providing full and partial authorisation. It will be treated as if it had been declared to be a body capable of providing full authorisation under article 350(1) as it will be following the enactment of the Bill.

Mr Flanagan: OK. That is dead on.

Mr Reid: Certainly, we can clarify with those who gave evidence —

The Chairperson (Mr McGlone): There seems to be a wee bit of misinterpretation there. It is pretty clear to me from what you have said what the situation is — very clear to me, in fact — but there seems to be some sort of misconception or whatever.

Mr Monds: I will get back to those gentlemen. I know them both —

The Chairperson (Mr McGlone): Yes, you would do.

Mr Monds: — and we have regular contact with them. I will clarify that.

The Chairperson (Mr McGlone): They are two pretty competent guys at their business.

Mr Monds: Absolutely, yes.

The Chairperson (Mr McGlone): OK, thanks for that.

Mr Agnew: Before we move on from clause 14, the one other concern that I recall — I do not have Hansard in front of me — was that not every case could necessarily fit neatly into the category of individual or corporate. What would your reply be to that concern?

Mr Monds: It should be to an insolvency practitioner who is qualified in one or the other. I would think that a short interview with the person they are dealing with should establish at that stage the facts of the case, and whether there is a partnership involved or potential company issues.

There is also the type of debt they are in. You have to expect a qualified IP to be in a position to identify all of that pretty quickly. A partially authorised practitioner should be able to identify if they had the full skill set to deal with a particular case.

Mr Agnew: Are you content that we would not see scenarios whereby somebody goes to an IP and gets part-way through their case, having spent time and presumably money, only to find that the person cannot take them the whole way through the process?

Mr Monds: I would think it unlikely. If the individuals give full details of their circumstances, and if the insolvency practitioner is qualified to do just personal insolvency and there are elements to the case regarding partnerships, a company or if a similar property has been subject to security on it as part of the business, that should be identified pretty quickly.

I think that it is highly unlikely that that would be the case. However, I would not doubt that it could happen because sometimes when people are dealing with these circumstances, they do not, for whatever reason, volunteer all the information that they should.

Mr Agnew: Things might come to light to the practitioner.

Mr Monds: It could happen, but if someone is being completely open and transparent with the person dealing with their case, I would expect that that person should identify whether some other skill set is required or both skill sets are required.

Mr Agnew: Clause 6 amends, but does not repeal, the fast-track voluntary arrangement. The Department stated its intention to repeal the fast-track system in a future insolvency Bill. If you know the direction of travel, why not do it in this Bill?

Mr Reid: There is a large number of outstanding amendments to be made to insolvency law in Northern Ireland in order to replicate various provisions made, or in the course of being made, in three Westminster Bills. It would be irrational to single out one particular provision to deal with. Those matters would have to form the subject of a future insolvency Bill during the lifetime of the next Assembly. It would be irrational to single out one particular provision from those Bills to be dealt with in the current Bill.

Mr Agnew: OK. It has been mentioned that we have to stay in line with GB so that there is consistency across the region. I suppose that the bigger question then is this: do we wait for them to do it and then follow suit so as not to be out of line; and if so, what is the difference between being ahead of the game and being behind the game? There will be some delay between our legislation and theirs.

Mr Reid: We examined the legislation in progress at Westminster to see whether there were any issues that needed to be dealt with urgently. We identified two. One was the issue of partial authorisation for insolvency practitioners, which needed to be brought in in Northern Ireland urgently to comply with the EU services directive, and the other was a matter concerning the provision of bank accounts, because we realised that the Department would come under great pressure if it did not do something to facilitate making bank accounts available to people who did not have them.

The other matters — and there is a huge number of them — are similar. There is no outstanding urgency attached to them. The abolition of fast-track voluntary arrangements falls into that category. Normally, there is a set of procedures to go through to make legislation in Northern Ireland. It is not a straightforward process. There is a requirement to consult. There is a requirement to prepare a regulatory impact assessment. To have simply selected abolition of fast-track arrangements and put them into this Bill without carrying out those procedures would not have been justified.

Mr Agnew: OK. I have a funny feeling that I asked this question at the last meeting, but if I did, I do not recall the answer: if we have to keep in step with the rest of the UK — and it sounds like there is good reason for doing so — why was this not done through a legislative consent motion? Are there reasons why that could not happen?

Mr Reid: Yes. We are amending Northern Ireland law at the moment — not the insolvency legislation, but company director disqualification legislation — through a legislative consent motion, but there is a greater link with other measures in that particular Bill, which is the Small Business, Enterprise and

Employment Bill, because it also amends company law. Insolvency law is a devolved matter under the Northern Ireland Act 1998. For us, in the interests albeit of ensuring that we kept in step with GB and that there was no time lag, to start to take the line that it should be done by legislative consent motion would undermine the stipulation that insolvency legislation is a devolved matter.

Mr Agnew: I kind of accept that, but I do not understand the rationale that if we do things ourselves and question doing something differently, the answer is that we have to do what GB is doing. There is power to do something different.

Mr Monds: The use of the legislative consent motion, which would certainly be a lot quicker, would really mean that when the legislation passes through Westminster, it applies in Northern Ireland. That sort of circumvents the whole Assembly and Committee process as well. It removes the scrutiny element which may be able to tease out the issues that we talked about where there may be differences and public interests that may define Northern Ireland as being different or requiring something different to what happens in the rest of GB. Really, our default position would be that we bring everything to the Assembly through the Committee where possible unless there is an overriding urgency whereby something needs to be put in place — for services and things like that — at the same time here and in GB.

Mr Agnew: Has there been any example to date where we have diverged from the rest of the UK to some degree because of Northern Ireland-specific circumstances?

Mr Reid: There are certain nuances that are different in Northern Ireland such as, for example, enforcement procedure in relation to debts. This is not referred to in insolvency legislation in GB, which takes a different route. They have a system of bailiffs whereas we only have the Enforcement of Judgements Office. So, there has to be some adjustment for Northern Ireland. No, there have not been any major policy differences; that is the answer to your question. But the fact also remains that, as I say, insolvency legislation is listed as a devolved matter in the Northern Ireland Act, and, in keeping with it being such, we normally adhere to the principle, unless, as my colleague said, an overriding reason is being made by the Assembly. We do not try to undermine that.

Ms Fearon: In relation to clause 13, — *[Inaudible.]* — being able to facilitate bank accounts. We heard from representatives from PwC last time that there is no bankruptcy protocol. It is in the Hansard report, which you said you have read. Do you think it would be of benefit if we had that as part of the legislation?

Mr Monds: This is in relation to banks being brought around the table and it being suggested that they should put that in place. I think it would certainly be helpful in the whole process. The intention of the change in legislation is to make banking available to everybody, to bankrupts and to those who are recently out of bankruptcy, but ultimately it is the bank's decision to let people have a bank account or not. So, the intention of the legislation is to facilitate this and remove the risks to banks in allowing bankrupts to have their own bank accounts. It is anything that could assist that process for the benefit of citizens and the people who have been in bankruptcy and have recently come out of it. I think that this is to be supported.

Ms Fearon: There are provisions in clause 13 to remove any potential liability on banks after acquired property is passed through accounts. Does the Department believe that that will resolve the issue, because we obviously want to ensure that whatever is facilitated in law can also be facilitated in practice?

Mr Monds: Ultimately, as I said, we are making the changes to the legislation that hopefully will remove the risk and the potential for trustees to take action against the banks for after-acquired property. We have no powers to force banks to give people bank accounts but we can certainly write to them and make them aware of the changes in the legislation and of the reduction in risk. One would hope that they will take that on board.

Ms Fearon: Have there been any discussions between the Department and the banks around that?

Mr Monds: We have not engaged with the banking sector on that issue. I am not aware if our GB colleagues have done anything on that, but we can certainly check to see if there are any plans to try to reinforce the changes to banks and, hopefully, the actions they will take as a result of that. We can follow that up with the banks or with our GB colleagues.

Mr Kinahan: We were talking about codes of conduct. Are you looking to see whether there are any codes of conduct for insolvency practitioners in Scotland, Wales or somewhere else that we can learn from?

Mr Monds: At the present time, an insolvency practitioner must be authorised by a recognised professional body. Currently, we and the Secretary of State license, but that will be removed from the legislation as well.

There are different areas that you could define as codes of conduct. For example, the legislation is quite detailed. It provides quite a broad spectrum of requirements for insolvency practitioners. The recognised bodies tend to be professional bodies and so will have their own codes of ethics that will apply to all their members and that their members will be monitored against. Those will be in place, and our proposal to introduce the regulatory objectives will add a third element to this. Once that clause is put in place, insolvency practitioners will probably have the widest codes of ethics and approaches. For other professions, such as solicitors and those in the legal profession, there are voluntary codes of conduct and codes of ethics with the professional bodies. There is nothing statutory. Once this legislation is put in place, there will be a very detailed code of conduct.

The Chairperson (Mr McGlone): On this issue, you will have picked up that there are concerns around the edges about how things will be enforced and overseen. There is a case here that the Department has looked into. It was referred to you before by Mr Allister. It crystallises this issue, and we will come back to you on that matter. The Committee — and I am sure I speak for all members — will want to keep a close watch on the code of conduct, to see how that evolves as part of the legislation, and on what the Department is doing on it. I ask you to keep us fully informed about what is happening there, please.

Mr Monds: Absolutely.

Mr Flanagan: Patsy, can I ask a question before you move on? In terms of the code of conduct, we have been told that there will be an amendment at Consideration Stage. Can we get early sight of that amendment so that we can consider it before it goes to the Chamber?

Mr Monds: Yes. The offices of our legislative draftsmen are hoping to finalise it. It is our intention that, as soon as we get it, we will share it with the Committee for its review.

Mr Flanagan: Will you take on board any comments that we make on it before it goes to the Chamber so as to try to get agreement between the Department and the Committee and try to keep everything as harmonious as possible?

Mr Reid: Sorry?

Mr Flanagan: If we have any suggestions on your proposed amendment, will you be willing to take them into consideration at an early stage to try to keep the Bill as harmonious as possible once it reaches the Chamber?

Mr Reid: Yes, we will consider any comments made by the Committee.

Mr Flanagan: Dead on.

Mr Reid: I know that you have to issue a final report on the proceedings.

The Chairperson (Mr McGlone): And form a recommendation.

Mr Flanagan: I am looking to get sight of the amendment before we finish our report, if that will be possible.

Mr Reid: We are aiming to do that, yes.

Mr Flanagan: That is fine.

The Chairperson (Mr McGlone): There are some comments — you will not have had sight of them — from the Examiner of Statutory Rules. We will forward them to you, and you could maybe come back to us in writing on them, please. OK?

Mr Monds: Yes.

The Chairperson (Mr McGlone): Grand, thank you. Quite a lot of the issues were clarified today. Thanks for your time in doing that.