

## **RESPONSE TO THE ONLINE CONSULTATION ON THE WORKING DRAFT OF THE PRESCRIPTION (SCOTLAND) BILL**

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### **THE INSOLVENCY SERVICE**

#### Clause 10 of the draft Bill

The 1973 Act (as it exists) seems predicated on action taken by the creditor itself (filing a petition, submitting a claim in a liquidation, for example). The addition of s.9(1)(e) (appointment of, or the submission of an application for the appointment of a receiver under s.51 of the Insolvency Act 1986) in clause 10 of the consultation draft of the Prescription (Scotland) Bill (definition of “relevant claim”) is new, and though it appears to follow the policy of linking the timing of “relevant claim” to action taken by a creditor, it appears to us odd that there is not a similar provision made for administrations made under paragraph 14(1) of Schedule B1 of the Insolvency Act (power to appoint by floating charge holder). If a paragraph 14 appointment is not provided for, then the effect as to whether the appointment of a receiver or an administrator by a floating charge-holder is a “relevant claim” comes down to one of timing as to when the floating charge was created, as floating charge-holders can only make appointments under s.51 if their charge was registered before 15 September 2003 (Enterprise Act 2002) (where the floating charge was created after that date the floating charge-holder’s remedy is to appoint an administrator under paragraph 14). That would appear to be an unusual position to take.

We also query whether the addition of (g) (appointment of an administrator under paragraph 12 of Schedule B1 of the Insolvency Act) is required, given that it would appear to move away from the policy of the 1973 Act to link the earliest timing of “relevant claim” to action taken by a creditor, and as the submission of a claim in an administration by a creditor that did not initiate the administration would be caught by proposed new (h) (submission of a claim in administration) anyway. If it is thought necessary to include (g), is there not also a case for including the appointment of the insolvency office-holder in a sequestration, trust deed or liquidation?

Similar comments apply to the addition of (d) and (f) to s.22A(3) of the 1973 Act.