WRITTEN RESPONSE TO CONSULTATION ON
CLAUSES 131 AND 132 – SMALL BUSINESS,
Enterprise and Employment Bill – Small Debts

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 small debt claims as set out within Clauses 131 and 132 of the Small Business Enterprise and Employment Bill currently progressing through the UK Parliament.

Executive summary

5. We believe that the legislation supports the policy objective of simplifying procedures. The policy objective can be best achieved with the proposals being implemented in all types of insolvency proceedings and by being implemented in all UK legal jurisdictions.

6. We are cautious in accepting that the provisions are likely to achieve significant cost reductions and time savings in insolvency processes. We believe that the quality of an insolvent’s records together with creditor’s attitudes will impact on the number of insolvency proceedings where the requirement to submit small debt claims will be applied either as a result of creditors disputing the amount due or the office holder believing that the insolvent’s records are not sufficiently accurate to be relied upon.

7. We support consistency in the treatment of small debt claims across all personal and corporate insolvency proceedings.

8. We broadly support the prescribed limit being set at £1,000.

9. Should the prescribed limit be set at different levels in personal and corporate proceedings we would support the prescribed level in corporate proceedings being set at a higher prescribed level than currently proposed. We would suggest £2,500 as being an appropriate prescribed level in these circumstances.

10. We would suggest that it would be appropriate for certain types of claims to be excluded from the small debt claim provisions. In particular -

- associates or connected parties;
- employees;
- creditors claiming security rights; and
- creditors who are not the original creditor of the insolvent (purchased debts) should not be entitled to have dividends paid without a claim having been submitted.
Detailed Comments on the proposals

Policy objectives

11. The proposals have been included within the Small Business Enterprise and Employment Bill having been included within the Government’s Red Tape Challenge - changes to insolvency law to reduce unnecessary regulation and simplify procedures consultation carried out in 2013/14. ICAS supports the principle of reducing unnecessary regulation and simplification of procedures in relation to insolvency processes as being generally beneficial for the economy and wider society.

12. It is our understanding that the Government intends to apply these provisions in respect of administration, liquidation and bankruptcy but not other forms of insolvency proceedings. The provisions are due to be implemented with the modernised Insolvency Rules anticipated to come into effect in 2016. The Bill once passed by Parliament would result in an amendment to the Insolvency Act 1986 and would be applicable in England, Wales and Scotland.

13. Bankruptcy and the process of liquidation are devolved to the Scottish Parliament. It is unclear how, or if, the proposed changes would be taken forward by the Scottish Parliament. Should the changes not be given effect in Scotland we are concerned that this would lead to confusion amongst creditors. In addition, creditors are likely to be being disadvantaged when dealing with Scottish companies through lower returns in Scottish insolvency processes. The lack of harmonisation across all UK jurisdictions would threaten the policy objectives and is likely to result in creditors being faced with more complex procedures in insolvency law.

14. In a survey of our members 93% of respondents indicated that different procedures relating to small debt claims amongst the UK legal jurisdictions would lead to confusion for creditors and result in additional costs being incurred in insolvency processes. We therefore call on the UK and Scottish Governments to commit to working together to ensure that any changes are implemented simultaneously in all UK jurisdictions and to ensure that adequate resource, expertise and parliamentary time is made available to achieve this.

15. We note that it is the Government’s intention to limit the provisions to administration, liquidation and bankruptcy. We believe that this will similarly result in a more complex legislative landscape and seems contrary to the stated objective of creating simplified insolvency procedures. As a result, it is likely that creditors will be confused and unnecessary time will be incurred by office holders in dealing with claims.

16. In a survey of our members less than one third of respondents believed that it was correct to restrict the procedures that the provisions would apply to. Nearly 70% of respondents believed that if the provisions were to be introduced then they should apply to all forms of insolvency proceedings.

17. We therefore believe that the policy objectives of the legislation can be best achieved if implemented in all insolvency processes and in all UK jurisdictions.
**Small debt claims**

18. We are cautious with the view that introducing provisions relating to small claims will result in cost savings in the insolvency process. In a survey of our members 47% of those responding believed that the provisions would not result in a reduced need for office holders to spend time handling claims which may result in small dividends.

19. Only 5% of respondents in our member survey anticipated that creditors would rarely dispute the amount shown in the insolvent’s statement of affairs. Only 17% thought that the quality of an insolvent’s records would be sufficient to allow them to be satisfied that the amounts within the insolvent’s records or statement of affairs could be relied upon often or always. If this were the case once the legislation is commenced as a result of creditor and office holder views it is likely that time will remain having to be spent on claims where the dividend may be small.

20. We do however believe that the right of an office holder to ask for a claim to be submitted will act as an appropriate safeguard against abuse and that if the prescribed limits are set at the correct level, the right to ask for a claim to be submitted will achieve the right balance between minimising unnecessary costs in insolvency proceedings and requiring office holders to undertake their duties in a sufficiently robust fashion.

21. We note that the provisions are likely to apply to all small debts. We would suggest that certain debts should however be excluded from the small debt provisions.

22. To assist with trust and transparency in insolvency processes we would suggest that claims relating to Associates or connected parties should be excluded.

23. Employee claims should also be excluded as employees will continue to be required to submit claims to the Redundancy Payments Office and significant time is likely to be incurred reconciling claims to the RPO (and hence dividends to be paid to the RPO) with the insolvent’s records. Insolvency practitioners will most often assist employees with their claims in any case and therefore it is unlikely that the provisions would result in time savings.

24. Where a creditor believes they have any form of security (for example lien or retention of title) that they should also be excluded from the provisions as again it is likely that the office holder will require them to provide a claim in order that the security can be properly assessed.

25. Where the original debt of the insolvent has been sold on to a third party by the original creditor then it would be appropriate for this type of claim to be excluded from the small debt claim provisions. It is becoming increasingly common in such situations for the debt purchaser to continue to correspond with the insolvent and seek payment, despite the original creditor being aware of the insolvency. In addition, office holders currently incur significant time trying to make dividend payments to the correct party where debts have been sold on and where creditor records have not been properly updated. Requiring a claim to be submitted in the insolvency would ensure that the third party’s records are updated reducing time incurred by the office holder and that debtors in personal insolvencies have reduced exposure to debt management correspondence pursuing payment for debts which are included within the insolvency proceedings.

26. We would generally support the view that the prescribed level for small debts should be the same in both corporate and personal insolvency proceedings, although 20% of respondents to our member survey believed that there should be different prescribed limits for corporate and personal insolvency proceedings.
27. If it was decided that the prescribed level should be the same for both corporate and personal insolvency proceedings following this consultation, we would support the prescribed level being set at £1,000. In our survey, nearly 60% of respondents who indicated that the prescribed limit should be the same in both types of proceedings believed that the proposed limit of £1,000 was the correct level. Of those who disagreed, the indication was that £1,000 was too low and that the prescribed level could be increased. Suggested values for the prescribed level ranged from £2,500 to £5,000.

28. Should it be determined that the prescribed limits should be set at different levels for personal and corporate insolvency proceedings then we would suggest that the limit for corporate insolvency should be greater than the suggested amount of £1,000. We would suggest that taking into account the generally greater credit turnover in corporate proceedings that a prescribed limit of £2,500 would be appropriate.

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