

WRITTEN MINISTERIAL STATEMENT
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EDWARD DAVEY, MINISTER FOR EMPLOYMENT RELATIONS, CONSUMERS AND POSTAL AFFAIRS; DEPARTMENT FOR BUSINESS, INNOVATION AND SKILLS

PRE-PACKAGED SALES IN INSOLVENCY

In March 2011 I announced that we would be taking steps to improve the transparency and confidence of pre-pack sales in insolvency. We subsequently consulted interested parties on measures targeted at the sales of assets in insolvent companies where these are sold to connected parties (such as the directors or their close associates).

Pre-pack sales can offer a flexible and speedy means of business rescue and when used appropriately can be the best way of maximising returns for creditors. However, everyone who is affected by insolvency is entitled to have confidence that insolvency procedures are used fairly and that insolvency practitioners deliver the best possible outcome for all creditors.

It is apparent that concerns remain about the use of pre-pack sales, particularly where the assets are sold to a connected party – something that is often referred to as ‘phoenix-ism’. I am concerned about the potential for sales to be effected at an undervalue, particularly in smaller-value asset sales, where unsecured creditors may receive less than they should. I also believe that it is important to consider the effect of pre-pack sales on competitors in the market.

Following the announcement, my officials have discussed the merits and practical application of the proposed measures with a range of interested parties, including secured and unsecured creditors, insolvency practitioners, and business representatives.

Having taken account of all the issues, however, the Government is not convinced that the benefit of new legislative controls presently outweighs the overall benefit to business of adhering to the moratorium on regulations affecting micro-business which is an important plank of this Government’s deregulatory agenda. As much of the concern was related to small businesses, I do not consider that measures should be introduced just for businesses other than micro-businesses. It is for this reason that I am today announcing that the Government will not be seeking to introduce new legislative controls on pre-packs at this time.

The Insolvency Service, an executive agency of BIS, already monitors compliance by insolvency practitioners with the professional standard Statement of Insolvency Practice 16 (Pre-packaged Sales in Administrations) which requires administrators to provide creditors with early post sale information on details of the sale and the justification for it. I have asked my officials to now undertake an urgent review in conjunction with stakeholders of how the existing controls on pre-packs have been working and whether, in light of their experiences and the outcomes from the monitoring, more could be done within the existing regulatory framework to improve confidence and transparency.

The issues raised by pre-packs are important matters that affect a wide range of stakeholders including business interests, and I look forward to discussing the findings of the review with stakeholders in the Spring.

Edward Davey
Minister for Employment Relations, Consumer and Postal Affairs

