

UK: Row delays crackdown on 'phoenix' firms

Rules designed to crack down on controversial 'phoenix' companies have been delayed until next year following a row over Government proposals.

By [James Hurley](#)

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The Insolvency Service is revising the legislation, which was originally planned for this autumn, in response to disagreements which greeted proposals it outlined in March.

Ed Davey, the minister responsible for insolvency, had previously said measures including a three day notice period for connected parties ahead of a pre-pack deal could become law this year.

The Government said it would improve “transparency and confidence” in 'pre-pack' administrations, which allow companies that are about to collapse to be restructured and quickly sold to new owners – typically the existing management team – without the consultation of unsecured creditors.

Ed Davey, the minister responsible for insolvency, had said measures including a three day notice period for connected parties ahead of a pre-pack deal could become law before the end of the year. However, the Daily Telegraph understands the rules are now unlikely to be implemented before April 2012.

Much of the disagreement is related to the notice period proposal which Mr Davey said would give creditors a chance to “express concerns, which the administrator would need to consider, or make a higher offer for the assets”.

R3, the insolvency trade association, argued that publicising the fact that a company is in difficulties could lead to an erosion in value and have the “unintended consequence” of increased liquidations, which would see more unsecured creditors losing out.

Frances Coulson, president of R3, criticised the Government for proposing the three day notice period when it wasn't one of the options discussed at consultation stage.

“The delay is not surprising given widespread stakeholder dissatisfaction with [the three day notice period] for pre-packs. The proposals suited no one.”

She said the delayed implementation of the rules highlights “the need for government to properly consult on proposals instead of making knee jerk announcements”.

The Insolvency Service has also been flooded with rival submissions from creditors' representatives calling for the notice period to be longer and for tougher rules to stop abuses of pre-packs.

Pre-packs often inspire anger among creditors who lose money when failed companies are sold back to the existing management team, creating 'phoenix firms'.

Carole Hughes, managing director of credit management business Daniel Silverman, called for tougher legislation: “I’ve seen [abuses] time and time again and it makes my blood boil that people can walk away from their debts so easily.”

Insolvency Service figures show that 72pc of reported pre-pack sales last year were to related parties.

“Where the existing directors are buying back the assets, a lot of the time the creditor would have been interested in buying and would have paid more,” Ms Hughes said.

Ms Hughes said a seven day notice period would give creditors enough time to secure finance if they want to make a rival offer for the assets.

She added that a small proportion of insolvency practitioners are “blatantly marketing pre-packs as a way of avoiding debts. It’s immoral – and it should be illegal”.

Daniel Silverman has organised a petition calling for a “clamp down on rogue directors” including measures to stop directors repeatedly using pre-packs. “Questions need to be asked when you get up to 10 or 11 failed companies,” Ms Hughes said.

A spokesman for the Insolvency Service said: “Amendments are being made to the [legislation] by our lawyers. The [rules] will not be coming into force by the end of this year and we are now aiming for next year. We have endeavoured to take note of representations from all sides.”

<http://www.telegraph.co.uk/finance/businessclub/8714575/Row-delays-crackdown-on-phoenix-firms.html>