

<b>Title:</b> Guardianship of the Property and Affairs of Missing Persons <b>IA No:</b> MoJ003/2015 <b>RPC Reference No:</b> RPC14-FT-MOJ-2136 (2) <b>Lead department or agency:</b> Ministry of Justice <b>Other departments or agencies:</b> Office of the Public Guardian	<b>Impact Assessment (IA)</b>			
	<b>Date:</b> 01/02/2017			
	<b>Stage:</b> EANDCB Validated			
	<b>Source of intervention:</b> Domestic			
	<b>Type of measure:</b> Primary legislation			
<b>Contact for enquiries:</b> paul.hughes@justice.gsi.gov.uk				
<b>Summary: Intervention and Options</b>				<b>RPC Opinion:</b> Validated

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2014 prices)	One-In, Three-Out	Business Impact Target Status
-£1.93m	-£1.93m	£0.21m	In scope	Qualifying provision

**What is the problem under consideration? Why is government intervention necessary?**

When a person goes missing, the disappearance has no legal effect on that person's obligations and commitments so that their property and affairs may be unmanaged and unprotected for the duration of the absence. This can be detrimental to the missing person, to his or her dependants and to the businesses and organisations that had been dealing with the missing person or need to do so. The problem is that there is no procedure for anyone to obtain authority to protect the interests of the missing person. The creation of a new legal status of guardian of the property and affairs of a missing person would remedy this gap in the law. Legislation is necessary to achieve this so government intervention is required.

**What are the policy objectives and the intended effects?**

The intended effects of the proposal are that:

- Decisions can be made in relation to the missing person's property and affairs that could otherwise not be made (such decisions may include cancelling Direct Debits, arranging the insurance or maintenance of property and selling assets).
- Third parties, such as banks and insurers, will give effect to those decisions in the same way they would have done had they been made by the missing person.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

The creation in England and Wales of a new legal status of guardian of the property and affairs of a missing person is the only option under consideration. The absence of a procedure to confer legal authority to deal with the property and affairs of a missing person can only be remedied by legislation. To be effective the actions of a guardian must have the same effect, against third parties, as if they were actions of the missing person. Non-regulatory alternatives would not be able to achieve this. Legislation is the only way in which the objectives of the proposal can be achieved.

<b>Will the policy be reviewed?</b> It will be reviewed. <b>If applicable, set review date:</b> 5 years from implementation				
Does implementation go beyond minimum EU requirements?			N/A	
Are any of these organisations in scope?			<b>Micro</b> Yes	<b>Small</b> Yes
			<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b>	
			<b>Non-traded:</b>	

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible SELECT SIGNATORY:  Date: 15/2/17

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Creation of legal status of guardian of the property and affairs of a missing person

## FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year 2016/17	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -£0.77m	High: -£3.09m	Best Estimate: -£1.93m

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£0.36m	1	£0.06m	£0.77m
High	£0.55m		£0.34m	£3.09m
Best Estimate	£0.46m		£0.2m	£1.93m

### Description and scale of key monetised costs by 'main affected groups'

**Transition costs:** There will be start-up costs to the OPG and the court based on new guardian status. These transition costs can be collated into IT system changes, Communications and Training for both OPG and the court. Total transition costs have been estimated as £0.46m.

**Ongoing costs:** Costs for businesses and financial institutions to check the identity of guardians and registering them on financial accounts. Ongoing costs have been estimated as £0.4m p.a. for the first two years and £0.2m p.a. thereafter.

### Other key non-monetised costs by 'main affected groups'

**Transition costs:** Administration system changes and familiarisation costs to businesses to allow a new status of guardian to be registered before legislation comes into force.

**Ongoing costs:** Costs to guardians or missing persons in regards to any fees paid for appointment of new status; Costs to OPG and the court due to the new volume of cases per year; Cost to legal service providers for removal of complex cases attempting to protect the missing person's affairs.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate	N/A		N/A	N/A

### Description and scale of key monetised benefits by 'main affected groups'

None.

### Other key non-monetised benefits by 'main affected groups'

**Ongoing benefits:** Benefit to missing persons and their families from reduced legal service costs on current complex cases and from avoiding assets no longer dissipating or falling into disrepair; Benefit to businesses in dealing with a person instead of the complexity of not being able to, cost saving in administrative and professional hours in addition to associated cost savings; Benefit to legal service providers on advice and potential business increase related to guardianship applications.

### Key assumptions/sensitivities/risks

Key assumptions/risks on the monetised costs and benefits.

Transition costs assumptions/risks: based largely on IT system changes and may actually fluctuate based on IT upgrades prior to setup.

Ongoing costs assumption/risks: based on volume of cases, fluctuations and cost/savings per case for businesses being higher or lower than expected; Additional fees are not charged by businesses.

Discount rate %

3.5%

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: £0.21m	Benefits: -	Net: -£0.21m	
			£1.0m

# Evidence Base (for summary sheets)

## A. Background

1. In 2015-16, 249,000 missing person incidents were recorded in England and Wales, relating to an estimated 131,000 separate people, 56 per cent of whom (73,000) were adults. The vast majority were resolved quickly such that, where police forces routinely record the duration of absences, only 3% of adult cases (2,200) were outstanding after 7 days. This percentage falls further over time such that, as at 5 March 2016<sup>1</sup>, just 466 adults who had gone missing in England and Wales during the previous year were still missing. Of these, 221 had been missing for over 3 months.
2. People go missing for many reasons. Their disappearance has no legal effect on their obligations and commitments meaning their property and affairs will be unmanaged and unprotected for the duration of the disappearance. This can lead to the dissipation of assets (for example, through uncancellable direct debits) and their deterioration or loss (for example, through lack of maintenance or failure to meet financial obligations, such as mortgage payments).
3. Such disappearances can also deprive dependants of the support they need (and have been accustomed to receiving) from the missing person and leave third parties unable to conclude ongoing business with the missing person or to make sensible arrangements with those left behind.
4. At present there is no procedure for anyone to obtain authority to protect the interests of the missing person although representatives may already be appointed by individuals in a range of other circumstances. For example, a person going abroad may grant a power of attorney to have his or her affairs managed whilst overseas. Likewise, a person planning ahead can create a Lasting Power of Attorney (LPA) to come into effect when he or she is no longer able to manage his or her own affairs; and it is usual practice for a will to include the appointment of executors who will administer the estate of the person making the will after his or her death.
5. Representatives can also be appointed by law in a number of situations, including where the Court of Protection appoints a Deputy to manage the affairs of a person who has lost mental capacity; and where the deceased did not leave a will.
6. Around 2-3 million attorneys currently have the legal authority to act under a LPA or its statutory predecessor, an Enduring Power of Attorney (EPA), in relation to managing the affairs of people who have not gone missing, plus there are around 50,000 people who have a Deputy managing their affairs. Each year, around 200,000 LPAs and EPAs are registered and around 250,000 grants of representation are issued.
7. The reforms assessed in this Impact Assessment (IA) in effect provide for a new class of representative to act on behalf of those who have disappeared and the creation of a new legal status of guardian of the property and affairs of a missing person would remedy a gap in the law. As non-regulatory alternatives would not be able to achieve this, legislation is the only way in which the objectives of the proposal can be achieved.
8. In 2014 a consultation paper on preliminary proposals for the creation of the legal status of guardian of the property and affairs of a missing person was published. The response to the consultation was overwhelmingly supportive of the approach proposed. The consultation paper and the response document are available on gov.uk.<sup>2</sup>

## B. Rationale and Policy Objectives

9. The conventional economic rationales for Government intervention are based on efficiency or equity arguments. Government intervenes if there is a perceived failure in the way a market operates

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<sup>1</sup> Data provided by the UK Missing Person's Bureau

<sup>2</sup> <https://www.gov.uk/government/consultations/guardianship-of-the-property-and-affairs-of-missing-persons>

("market failures") or to correct existing institutional distortions ("government failures"). Government also intervenes for equity ("fairness") reasons.

10. The primary rationale for this proposal is efficiency: permitting the guardianship of property and affairs of missing persons' aims to address the objective of correcting existing institutional distortions ("government failures"). Currently there is no procedure for anyone to obtain authority to protect the interests of a missing person. Creating a new legal status of guardian of the property and affairs of a missing person would fill a gap in the law and corrects existing institutional distortions.
11. This proposal also aims to address the objective of equity ("fairness") to allow for a new legal status enabling the same ability for guardians to manage property and financial affairs as a missing person and would enable third parties (banks and insurers) to recognise these guardians with the same level of authority.

## **C. Affected Stakeholder Groups, Organisations and Sectors**

12. The groups most affected by this proposal are listed indicated below:

- The MoJ and its arms' length bodies, including:
  - HM Courts and Tribunals Service (HMCTS);
  - Office of Public Guardian (OPG).
- Missing persons and their families.
- People appointed as the guardians of missing persons.
- Legal service providers, including Barristers/ Solicitors.
- Businesses, including Banks and Insurers.
- Any third parties involved in missing person cases, e.g. Missing Persons Bureau and the Police.

## **D. Description of Options Considered**

13. To meet the policy objectives, the following options have been considered:

- **Option 0/ Do nothing: Leave the law unchanged**
- **Option 1: Create in England and Wales of a new legal status of guardian of the property and affairs of a missing person**

### **Option 0**

14. Under this option there would be no change in the law and the problems identified above would continue.

### **Option 1**

15. Under this option a new legal status of guardian of the property and affairs of a missing person in England and Wales would be created. To be effective the actions of a guardian must have the same effect, against third parties, as if there were actions of the missing person.
16. The guardian would be appointed by a court and would have authority to act on behalf of the missing person in much the same way as an agent acting under a power of attorney or a Deputy appointed by the Court of Protection under the Mental Capacity Act 2005.
17. A person would be missing for these purposes if he or she must have been absent from his or her usual place of residence and either his or her whereabouts must have been unknown; or, he or she must have been prevented by circumstances beyond his or her control from making or communicating decisions about his or her property and affairs (for example, being held

incommunicado in a foreign prison or as a hostage but not where the inability is the result of lack of mental capacity). In both cases this state of affairs must have endured for the whole of the 90 day period before the application. This is intended to cover cases of voluntary and involuntary disappearance, wherever and however the disappearance occurred.

18. The key features of this option are as follows:

#### *The role*

- Guardianship will be a fiduciary role akin to trusteeship.
- A guardian must act in the best interests of the missing person.
- A guardian can only be appointed by the court.
- The appointment may relate to all the property and affairs of the missing person or be limited.
- Within the scope of his or her authority the guardian will be able to do anything (including obtaining information) in relation to the property and affairs of the missing person that the missing person would have been able to do in person, other than making a will, making a gift or exercising powers vested in the missing person as a trustee.
- Third parties will deal with the guardian as if he or she were the missing person.

#### *The appointment*

- No appointment can be made unless the person has been missing for 90 days or, exceptionally, there is an urgent need when the court may relax the time limit.
- Anyone can apply to the court for a guardian to be appointed but the court will only hear an application from those with a sufficient interest in the property or financial affairs of the missing person.
- The appointment may be made for a period of up to four years.
- Before making the appointment the court must be satisfied that the proposed guardian is suitable (for example, he or she must have the necessary expertise and his or her interests must not conflict with those of the missing person).

#### *Supervision*

- The guardian will be supervised by the OPG and would be required to file accounts.
- There will be a register of appointments.

#### *Alternative order*

- The court may make one-off property orders (e.g. to sell an asset) instead of or in addition to making a guardianship order.

## **E. Cost and Benefit Analysis**

19. This IA identifies as far as possible both monetised and non-monetised impacts with the aim of understanding what the net impact on society might be from a new legal status of guardian of the property and affairs of missing persons. We have monetised some costs and benefits. However it has not been possible to quantify some important costs and benefits which impact society due to unavailable data. Instead we have provided qualitative description and assessment of the impact.

20. The “do nothing” option forms the baseline against which the alternative option has been appraised. As there are no additional costs or benefits associated with this option, its Net Present Value (NPV) is zero.

21. Monetised costs are in 2016/17 real prices. Net present values are shown over a 10-year appraisal period, using a 3.5% annual discount rate.

22. As both transition and ongoing costs have uncertainty and to account for the demonstrated and systematic tendency of project appraisers to be optimistic, we have applied optimism bias at 10% to transition costs and ongoing cost estimates, in line with HMT Green Book guidance.

## **Option 1: Create in England and Wales of a new legal status of guardian of the property and affairs of a missing person**

### **Assumptions**

#### *Volume of cases*

23. We estimate that there may be between around 50 to 300 guardianship appointments per year. For modelling purposes we have used a central estimate of 175. There may, however, be a significant spike in applications in the first two years, as many families have been awaiting this legislation. We therefore assume that applications will double in the first two years at 100-600, with a central estimate of 350. The basis for this calculation is explained in Annex 1.

#### *Type of impact*

24. The direct impacts of the reforms relate only to the process of substituting the missing person with the guardian in relation to who is deemed to be the controller of the assets in question.
25. Indirect impacts of the reforms relate to any decisions subsequently made by the guardian in relation to those assets. These decisions would be a behavioural response to the reforms on the part of guardians.

### **Costs of Option 1**

#### **Transition Costs**

##### *Monetised transition costs*

##### *MoJ, OPG and HMCTS*

26. There will be start-up costs to the OPG and the court based on the new guardian status. These transition costs can be collated into IT system changes, Communications and Training for both OPG and the court. The majority of the transition costs are attributed to the OPG, with IT system changes contributing the largest aspect.
- IT system changes: There would be costs associated with changing IT systems to reflect new guardian status including process, developer resource, adapting documentation and data capture, website changes. The IT system change costs are estimated to be £388,000.
  - Communications: There would be costs associated with preparing forms and guidance to reflect new guardian status including internal and external communications. These Communication costs are estimated to be £39,000.
  - Training: There would be costs associated with training required staff on the new system processes and guardian status. These training costs are estimated to be £29,000.
27. All figures are based on staff time and corresponding salary for the required changes in IT systems, communications and training incorporating any estimates on training course costs.
28. Total transition costs are estimated to be £456,000 including optimism bias (see Risks and assumptions section) depending on IT upgrades prior to rollout of the new guardian status and level of training required.

## Non-monetised transition costs

### *Costs to business - system changes*

29. Financial institutions with large customer bases, such as the six largest high street banks, may need to amend their administrative systems to allow the new status of guardian to be registered on an account before the legislation comes into force. These costs are likely to be very small, as similar procedures are already likely to be in place to deal with existing types of representative and with amendments possibly being incorporated in annual IT upgrades without generating additional costs.<sup>3</sup> The British Bankers Association (BBA) has indicated that such compliance costs would be low, on the understanding that the new missing persons guardianship framework will be aligned with existing frameworks for court of protection deputies, as is the intention.
30. There will also be initial familiarisation costs to banks and other financial institutions from disseminating information to key staff about the new guardianship status and how it is to be registered on internal systems. This is expected to be limited to staff who currently oversee existing provisions whereby one person may act on behalf of another. In practice the information is likely to be disseminated by way of routine staff bulletins or practice notes. As such, these familiarisation costs are expected to be negligible.<sup>4</sup>
31. In relation to other assets, such as property and vehicles, we do not anticipate that similar costs will be incurred by businesses in relation to amending administrative systems. We expect other businesses which are not asset holders but which may deal with guardians in relation to non-financial affairs (such as letting agencies) to react on an ad-hoc basis rather than systematically preparing for the new status.
32. Likewise for other assets, such as property and vehicles, or other non-financial affairs we do not anticipate that similar familiarisation costs will be incurred by businesses. We anticipate that all businesses and organisations will take an approach that is proportionate to the numbers of guardians with whom they expect to have to deal. For example the Financial and Leasing Association stated in its consultation response “We agree with the position adopted in the cost benefit analysis that firms will need to adopt a proportionate approach to making any changes, taking into account their current experience of cases involving missing customers”.

## **Ongoing costs**

### Monetised costs

#### *Business*

33. Financial institutions will incur ongoing costs in registering guardians as the controllers of the accounts in question. There will be an administrative cost to banks and other businesses and organisations from amending the status of an account to allow the guardian to manage the financial affairs of the missing person. Other ‘know your customer’ costs may be incurred to verify the identity of the guardian for anti-money laundering purposes, if this has not already been verified (e.g. if they do not already hold an account with the financial institution in question).
34. It is not known whether banks and other financial institutions would levy fees and charges in order to register a guardian as the controller of a missing person’s account. If fees were charged it is possible that these might be set to cover the costs incurred, leaving banks and other financial institutions with no net costs.
35. If fees are not charged, we estimate that ongoing costs of undertaking anti-money laundering ‘know your customer’ checks might be of the order of approximately £200,000. This is based on the

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<sup>3</sup> This assumption is based on preliminary consultation - <https://www.gov.uk/government/consultations/guardianship-of-the-property-and-affairs-of-missing-persons> - with the British Bankers Association (BBA) and the Council of Mortgage Lenders (CML).

<sup>4</sup> As above

assumption that each person has about 2 personal current accounts (PCA's) on average.<sup>5</sup> If we apply this to the best estimate of 175 (50-300 range) guardianships which may arise per year, these costs may be incurred in relation to 350 bank accounts on average.

36. Assuming for illustrative purposes that missing persons also hold the same number of 2 other financial accounts (relating to investments rather than to money held in banks), therefore assumes a total of 4 financial accounts per person then around 700 financial accounts may be affected each year. We also assume that the total costs of verifying pieces of information and costs of managing the entire process are estimated to be around £256 per account.<sup>6</sup> Applying this figure to 700 accounts per year and adjusting to 2016/17 price year including optimism bias (see Risks and assumptions section) generates a gross cost of £200,000 per annum. In the first two years, volumes are assumed to double (see volume section and Annex 1) which equates to approximately £400,000 per annum. This is a purely illustrative estimate which aims to indicate the order of magnitude of the possible gross business costs.

### Non-monetised costs

#### *Missing persons and guardians*

37. Guardians will be only be appointed by the court. The necessary procedures have not yet been created so the level of the fees to be set has not yet been decided. Nonetheless, subject to the possibility that the basis of the setting of those fees may change and may be different from that adopted in relation to guardianship fees, an indication of the size of the fee (if it were to be introduced today) might be gained from fees now charged for similar services. The fee payable for a similar application is currently between £400 and £530. In addition, all guardians will be subject to the supervision of the OPG. The analogous supervision fee for Deputies appointed under the Mental Capacity Act 2005 is £320 p.a.
38. Whatever level the fees may actually be set at the likelihood is that the cost will ultimately be borne by the estate of the missing person. If the fees for guardianship are, as seems likely, assimilated within the fee structures of the courts and OPG, it is likely that the standard remissions and exceptions will apply. Where the services of the guardian are provided by a person in the course of a business, it seems likely that the court will permit the guardian to recover fees and expenses from the estate of the missing person.

#### *Justice System*

39. The proposals, if implemented, will create a new court procedure and a new supervisory role for the OPG, generating an estimated 50 to 300 cases per year. There will therefore be an impact on the justice system from this increase in the use of both the Court and the OPG.
40. Ongoing use of the court process and supervision by the OPG would be fully funded by fees. We expect that legal aid will not be available in relation to guardianship cases except in exceptional circumstances (under the general power to make such awards).

#### *Legal service providers*

41. Those who are now eligible for guardianship, will no longer use legal service providers for the use of complex cases attempting to protect the missing person's affairs. This could lead to a reduction in business for legal service providers. However this would be an equivalent benefit to missing persons and their families (see benefits section).

#### *Consequences of decisions made by guardians*

42. Once a guardian's authority has been accepted, there may be some cost to business depending on any subsequent action that a guardian decides is in the best interest of the missing person. For

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<sup>5</sup> Total active PCA's (UK) per UK adult population 2014 – CMA retail banking market investigation full final report, 9 Aug 2016, ONS, 2016

<sup>6</sup> Based on ASHE 2015 data on the average wage of "business, finance and related associate professionals" (£19.66 per hour), with an additional 30% added to account for overheads, which yields a staff cost per hour figure of £25.56



example, this may include businesses who no longer receive automatic payments for goods or services which are not being used, or banks which in future might pay more interest on deposits if dormant savings are moved to higher earning accounts, or banks which see deposits withdrawn and invested or spent elsewhere.

## **Benefits of Option 1**

### **Ongoing benefits**

#### *Non-monetised benefits*

##### *Missing persons and their families*

43. Families of missing persons may benefit from cost savings in terms of avoiding time and money currently spent trying to find solutions to problems relating to the assets owned by the missing person. The aggregate annual cost incurred by families seeking legal and other solutions to problems following a disappearance is unknown. However, although it may not be representative of costs incurred in all cases, a case study provided by charity Missing People shows that one woman's family spent over £36,500 protecting her missing brother's affairs, in the 17 year period before they were able to sell his flat.
44. Missing persons may benefit from their assets no longer dissipating or falling into disrepair from not being managed. This may include cancelling unnecessary automatic payments for goods and services no longer used, preventing interest from accruing on debts, disposing of unused assets and investing the sums obtained, ensuring financial assets are invested in the most appropriate way, and ensuring physical assets such as property are maintained and do not fall into disrepair.
45. In addition to the management of assets, the families and dependants of missing persons may themselves benefit from drawing from the missing person's assets. They may also benefit in some cases from the making of property orders where the court considers them to be appropriate in addition to or instead of a guardianship order. This may be a more proportionate and cost-effective approach in some cases (although we are not able to estimate how many).

##### *Businesses*

46. Third parties, such as those who hold assets belonging to, or are owed liabilities by, the missing person may benefit from increased legal certainty. This may apply if they currently act upon decisions made by a representative of the missing person who does not currently have the legal authority to make such decisions. This risk will be removed under the proposed change. It is unclear how significant this benefit might be but the BBA agreed in its response to consultation that "Banks stand to benefit from increased certainty and greater ability to deal constructively with the families of missing persons."
47. Third parties may benefit from having a guardian to deal with in negotiating the payment of debts owed by the missing person. For example, a mortgage lender having a point of contact on a mortgage account could result in a property not being repossessed if a guardian intends to meet the monthly mortgage payment and as such the associated administrative and legal fees that go along with repossession can be avoided.

##### *Legal service providers*

48. Those seeking to obtain guardianship status may make use of legal professional services, both to assist with an initial application and subsequently for advice in carrying out guardianship duties. This could lead to an increase in business for legal service providers.
49. Some businesses may decide to provide professional guardianship services, for example where there is no family member or other individual willing and able to act as guardian. This opportunity is

likely to be taken up by businesses (typically legal and accountancy service providers) that already act as professional attorney and court appointed deputies.

### Consequences of decisions made by guardians

50. Some third parties may also benefit from economic activity generated by decisions of the guardian (for example, to repair or insure a property, or to dispose of unused property and allow other persons to make use of it).

**Table 1: Monetised and non-monetised costs and benefits (2016/17 prices, excl. VAT, incl. optimism bias)**

Item	Description	Cost/ Benefit	Assumption
<b>Transition Costs (one-off)</b>			
<b>Monetised</b>			
System changes for MoJ	Start-up costs to OPG and Court of Protection based on new guardian status.	£0.46m	Includes: IT changes, communications and training.
<b>Non-monetised</b>			
System changes for Businesses	Administrative system changes for businesses to allow for the new status of guardian to be registered.	-	Non-monetised cost: The BBA, in response to this particular cost indicated that such compliance costs would be low.
Familiarisation for Businesses	Familiarisation cost to businesses from disseminating information about new guardianship status.	-	Non-monetised cost: As with the system changes these costs are expected to be negligible.
<b>Ongoing Costs (per-year)</b>			
<b>Monetised</b>			
Registering guardians on financial accounts	Ongoing cost for businesses to check the identity of guardians and registering them on financial accounts.	£0.2m	Volume of financial accounts affected: 700 Cost to businesses per financial account: £256 Ongoing cost = volume * unit cost (Double the volume in first 2 years)
<b>Non-monetised</b>			
Costs to missing persons or guardians	Fees for court application and supervision by OPG in addition to any cost of professional advice.	-	Non-monetised cost: fee level unknown at this stage but will be at least cost-recovery level.
Costs to the justice system	An ongoing cost for MoJ, OPG, HMCTS from increased volume of cases per year.	-	Non-monetised cost: Can align the new process with existing procedures where appropriate and cost recoverable from fees.
Costs to legal service providers - removal of complex cases	Those now eligible for guardianship will no longer use legal service providers for the use of complex cases.	-	Non-monetised cost: Data is unavailable on the ongoing costs of these complex cases.
Consequences of decisions made by guardians	Indirect costs to businesses depending on subsequent action that a guardian decides.	-	Non-monetised cost: Subsequent decisions made by guardians are unknown.
<b>Ongoing Benefits (per-year)</b>			
<b>Non-monetised</b>			

Benefits to missing persons and their families	Benefit to missing persons and their families from reduced legal service costs on current complex cases and from avoiding assets no longer dissipating or falling into disrepair.	-	Non-monetised benefit: Data is unavailable on the ongoing costs of these complex cases. Qualitative benefit to missing persons and families.
Benefits to businesses - from being able to deal with a person	Ongoing benefit to businesses in dealing with a person, cost saving in administrative and professional hours.	-	Non-monetised benefit: Data is unavailable on admin costs currently dealing with complex missing person cases and therefore respective cost savings. In addition to estimating benefit in increased legal certainty.
Benefits to businesses - associated cost savings	Ongoing benefit to businesses in additional cost savings from reduced action on missing persons accounts.	-	Non-monetised benefit: Data is unavailable on average associated costs due to missing person's accounts.
Benefits to legal service providers - establishing guardian status	Benefit to legal service providers on advice and potential business increase related to guardianship applications.	-	Non-monetised benefit: The additional benefit in hours worked or potential new areas of legal service business is unknown and therefore non-monetised.
Consequences of decisions made by guardians	Indirect benefits to businesses depending on subsequent action that a guardian decides.	-	Non-monetised benefit: Subsequent decisions made by guardians are unknown.

## Net Impact: Option 1

51. Table 2 presents the estimated monetised costs, non-monetised costs are not included, of this option in real terms (2016/17 prices, excluding VAT). A negative NPV represents a net cost. It should be noted that the NPV does not include any benefits associated with the option as these could not be quantified.

**Table 2: Estimated monetised costs and benefits of Option1**

<i>£m, 2016/17 prices, Excl. VAT &amp; VEDS, Incl. Optimism Bias</i>	<b>Total Transition Costs</b>	<b>Steady State Ongoing Costs</b>	<b>10-year NPV</b>
<b>Option 1</b>	£0.46m	£0.2m	-£1.93m

## F. Assumptions, Risks and Sensitivity Analysis

### Assumptions

52. It has been assumed businesses will not charge additional fees relating to registering a guardian of a missing person on an account.
53. The cost calculation based on the average number of accounts held assumes that the profile of people who go missing mirrors that of the general population. Assumes 2 personal current accounts (PCA) per person and 2 additional financial related accounts.
54. It has been assumed in the first two years of implementation estimated volumes will double due to legacy missing person cases and those awaiting this piece of legislation. (Seen Annex 1)
55. It has been assumed transition costs occur in 2018/19 and ongoing costs and benefits occur from 2019/20.

56. It has been assumed that the non-monetised benefit of this proposal is greater than the cost as currently there is no procedure for anyone to obtain authority to protect the interests of the missing person. The creation of a new legal status of guardian of the property and affairs of a missing person would remedy this gap in the law.

## Risks

57. There is a risk that the policy objectives will not be met if the cost of the court fees for making an application and/or the OPG supervision fees outweigh the benefits or savings that a guardian could provide in particular cases.

58. There is a risk that anticipated volumes may fluctuate due to either a greater than expected backlog in missing person cases or an increase in missing person cases in future years. This will have an impact on both the ongoing cost and benefits.

## Sensitivity Analysis

59. We have included both a low and high estimate for transition costs and ongoing cost based on the lower and upper bound of volumes of guardianship applications (see Annex 1). In addition to this we have carried out two specific sensitivities, change in IT system costs and volumes for guardianship applications.

60. IT system changes are the largest component within the transition costs and carry uncertainty until the procurement process and IT requests commence. To quantify this risk, a sensitivity has been conducted with a 50% increase in IT system change costs. The results are shown below and suggest that such an increase would reduce the NPV of Option 1 by just under 10%, a relatively small margin:

Economic NPV	Option 1
Current assumptions	-£1.93m
50% increase in IT system change costs	-£2.11m

61. Volumes for guardianship applications hold the greatest risk in fluctuations due to either a greater than expected number of legacy missing person cases or an increase in missing person cases in future years. To quantify this risk, a sensitivity has been conducted with a 50% increase in guardianship applications for both the initial 2 years and thereafter. The results are shown below and suggest that such an increase in volumes would reduce the NPV by just under 40%, which is more significant than the above sensitivity, but still only £0.75m in absolute terms.

Economic NPV	Option 1
Current assumptions	-£1.93m
50% increase in ongoing guardianship application volumes	-£2.68m

62. As stated further above, benefits are not included within this cost-benefit analysis and therefore this sensitivity does not include the benefits that would result from an increase in guardianship application volumes.

## Direct costs and benefits to business calculations (following BIT methodology)

63. The aggregate, quantified net direct costs of the proposal on business are expected to be £200,000 per annum in the steady state and £400,000 during the first two years (2016/17 prices). Evaluated over a ten year period, this generates an overall EANCB figure (in 2014/15 prices, 2015/16 present value) of £210,000 (IN).

64. As explained above, if financial institutions charge fees or charges to cover their administration costs then the EANCB figure may fall to zero. However, in the absence of a clear commitment at this stage

by financial institutions to charge such fees and fines, it has been assumed that they will not be charged.

65. Furthermore, we have not been able to monetise the direct business benefits of the reforms and hence these do not feed through to the EANCB figure. In practice these benefits would offset the cost to some extent.

### **‘One-in, Three-Out Status’ (OI3O) and Rationale for Triage rating**

66. This measure is a qualifying regulatory provision under Section 22(2) of the Small Business Enterprise and Employment Act 2015. It is in Scope of the Business Impact Target and has been assessed as a low cost regulatory net burden cost under OI3O. The measure was considered suitable for the fast track appraisal route as the proposal as a whole is expected to produce costs to business of less than £1m per annum gross. It is not a manifesto commitment.

### **Small and Micro-Business Assessment**

67. The consultation did not provide any information that would suggest that small and micro businesses would be disproportionately affected by these reforms. The main businesses affected would be financial institutions and some utilities companies.

### **Equality and Family Impact Assessment**

68. We have considered the Public Sector Equality Duty (“PSED”) in relation to the proposals and have concluded that the creation of the new status is consistent with it. We also consider that the creation of the new status will not in itself result in direct discrimination and is unlikely to result in indirect discrimination. We do not believe the proposals will create a risk of victimisation or harassment. The extent to which the proposals may give rise to an opportunity to advance equality of opportunity or to foster good relations is uncertain but persons with protected characteristics may be guardians or persons whom guardians may benefit and by providing a new procedure the proposals may enhance the opportunities enjoyed by the persons with protected characteristics.
69. We have considered how the creation of guardianship will affect families. We have concluded that it will help families of all kinds, but will only be used where there are sufficient assets that cannot be otherwise accessed and which are important to the financial viability of the family. The choice of whether to apply for a guardianship order will need to be made in the light of all the circumstances. The proposals will therefore support families and family life in a small but important set of circumstances.

### **Summary and implementation plan**

70. The proposals for creating a new status of a guardian of the property and affairs of a missing person have received considerable support at public consultation and in Parliament as an appropriate way to remedy the current gap in the law. Although it has not been possible to monetise all of the costs and any of the benefits, the benefits are expected to outweigh the costs. We therefore intend to legislate to give effect to the proposals.
71. The first stage is the primary legislation that will create the legal framework for the new regime. This will establish the court-based appointment procedure, the functions and duties of the guardian, the terms of appointment, and the supervisory functions and powers of the Office of the Public Guardian (OPG).
72. The second stage will be to create the necessary secondary legislation, specifically rules of court and OPG regulations. In tandem with this process we shall prepare suitable guidance to help people using the new system to understand what to do – both in applying for the appointment of a guardian and in carrying out the role of guardian.
73. Alongside creating the legislative and regulatory regime, we shall work with key stakeholders – including HMCTS and OPG -so that they can prepare as necessary (e.g. making relevant staff aware and updating systems to recognise the new type of representative).

## **Post implementation Review (PIR)**

74. We intend to carry out a PIR when the new system has been in operation for five years. This should give adequate time for the working of the legislation to be tested in relation to an adequately wide range of circumstances so that an overall view of the effectiveness and suitability of the procedures established can be formed.

## Volume of cases

1. In 2015-16, 249,000 missing person incidents were recorded in England and Wales, relating to an estimated 131,000 separate people. However, the vast majority of these incidents were resolved relatively quickly such that, where police forces routinely recorded the duration of absences, only 2% of all cases were outstanding after 7 days and 3% of adult cases were outstanding after 7 days. 56% (73,000) of missing individuals related to adults, suggesting a possible upper limit of around 2,200<sup>5</sup> guardianship cases if an appointment were allowed after a very short absence<sup>7</sup>. As at 5 March 2016<sup>8</sup>, just 466 of the adults who had gone missing in England and Wales during the previous year were still missing. Of these, 221 had been missing for over 3 months.
2. Not all these missing adults will have left behind them property that needs to be managed or families that need to be supported. On the assumption that guardianship would not be available for short absences these figures suggest that the upper limit for the number of new missing person incidents which might result in an application for guardianship might be between 150 and 300 cases annually.
3. This estimate is supported by the experience in jurisdictions where a mechanism for dealing with the property and affairs of missing persons already exists. Table 3 sets out the average number of applications per year in each jurisdiction. The proportion of applications compared to both the general population and the total number of missing persons cases in each jurisdiction are applied to the population and total number of missing person cases respectively in England and Wales<sup>9</sup>. This suggests there could be around 50 applications for the appointment of a guardian annually.
4. Based on this international comparison and the number of adults in England and Wales who remain missing for more than a very brief period, our working estimate is that there could potentially be between 50 and 300 appointments annually, but that it is probably more likely to be between 50 and 100.
5. From information provided by the Foreign and Commonwealth Office we estimate that there are a very small number of cases (up to five annually) where people are held in circumstances where their whereabouts is known (for example, a foreign prison) but, due to restrictions imposed by their captors, they cannot communicate their instructions relating to their property to third parties. Only rarely is the whereabouts of hostages known.
6. In addition to this annual figure, we anticipate that there may be an initial spike in the first two years. This is due to a number of legacy missing persons cases, where the person has been missing for longer than a year. For example, as at 5 March 2014, the Missing Persons Bureau's records contained 1,289 live cases of adults who had been reported missing prior to 5 March 2013 and in response to the consultation<sup>10</sup>, 'Missing People'<sup>11</sup> informed us that, as at 18th November 2014, their database held records of 2,414 missing adults who had been missing for over three months and for whom no outcome was known. We have assumed that the number of applications could double in the first two years at 100-600. However, in some of these cases alternative solutions may have already been found (such as by negotiating with asset holders) or that assets will have depleted to a point where guardianship would no longer be required, so the size of any potential spike will be limited to this degree.

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<sup>7</sup> 3% of 73,000 is 2,200

<sup>8</sup> Data provided by the UK Missing Person's Bureau

<sup>9</sup> Where other jurisdictions only provide the number of missing adults as opposed to all missing persons, an estimate of the number of missing adults in England and Wales is used for comparison.

<sup>10</sup> <https://www.gov.uk/government/consultations/guardianship-of-the-property-and-affairs-of-missing-persons>

<sup>11</sup> Missing People is a UK-based charity which specialises in bringing missing children and adults back together with their families.

**Table 1: Estimated guardianship applications per year based on international jurisdictions**

Jurisdiction	Population	Number of reported missing (in given year)	Number of cases using guardianship legislation	Equivalent number of guardianship applications in E&W as proportion of population	Equivalent number of guardianship applications in E&W as proportion of adult missing cases
England & Wales	57.9 million <sup>12</sup>	131,429 in 2015-16 (73,028 adults) <sup>13</sup>			
NSW	6.8 million <sup>14</sup>	9,788 in 2005-06 (estimated 4,720 adults) <sup>15</sup>	2009 - 2013: 4 cases [= 4 cases in 5 years = <b>0.8 per year</b> ]	6.8	12.4
Australian Capital Territory (ACT)	0.33 million <sup>12</sup>	1,078 in 2005-06 (estimated 340 adults) <sup>13</sup>	3 cases from 2007 - 2014 <sup>16</sup> [= 3 cases in 7 years = <b>0.4 per year</b> ] (though note not all cases involved ACT residents)	70.2	85.9
Victoria	5.1 million <sup>12</sup>	5,567 in 2005-06 (estimated 2,690 adults) <sup>13</sup>	2012: 3 applications 2013: 2 applications [= 5 cases in 2 years = <b>2.5 per year</b> ]	28.4	67.9
Ontario	13.7 million <sup>17</sup>	5,581 adults reported missing in 2014 <sup>18</sup>	Anecdotally, only one or two would be received in any given year. <sup>19</sup> [= <b>2 per year</b> ]	8.5	26.2
British Columbia	4.7 million	7,701 adults reported missing in 2014	Public Guardian and Trustee acts as curator <sup>20</sup> : no.of cases: 2012/13 - 2 2011/12 - 3 2010/11 - 0 2009/10 - 2 2008/09 - 2  Private applications (not tracked): only be a few every year and possibly to a maximum of 5 per year. <sup>21</sup> [= <b>5 per year</b> ]	61.6	47.4

<sup>12</sup>Mid-2015 England & Wales Population , ONS

<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/datasets/populationestimatesforukenglandandwalesscotlandandnorthernireland>

<sup>13</sup> No. of missing persons: MPB report 2015-16 <http://missingpersons.police.uk/en/resources/missing-persons-data-report-2015-16>

<sup>14</sup> Mid 2005, Populations, Regions of Australia – Australian Bureau of Statistics

<sup>15</sup> Missing Persons in Australia, 2008 - <https://www.missingpersons.gov.au/find-out-more-about-missing-persons/research>

<sup>16</sup> Confirmed by ACT Civil and Administrative Tribunal

<sup>17</sup> 2014 Population, Regions of Canada <http://www.canadasmising.ca/pubs/2014/index-eng.htm>

<sup>18</sup> No. missing adults: Canadian Police Information Centre, 2014 <http://www.canadasmising.ca/pubs/2014/index-eng.htm>

<sup>19</sup> Confirmed by the Office of the Public Guardian and Trustee; the Public Guardian and Trustee is required to be served on behalf of the missing person in applications under the Absentees Act. Superior Court of Justice is unable to provide statistics.

<sup>20</sup> Public Guardian and Trustee annual reports ([http://www.trustee.bc.ca/reports\\_publications/index.html](http://www.trustee.bc.ca/reports_publications/index.html)):

<sup>21</sup> Confirmed by the Public Guardian and Trustee, which is usually served with private applications