 Regulatory Policy Committee	Opinion	
Impact Assessment (IA)	Enabling Digital by Default	
Lead Department/Agency	Ministry of Justice	
Stage	Consultation	
IA Number	MOJ 211	
Origin	Domestic	
Expected date of implementation (and SNR number)	April 2014 (SNR 7)	
Date submitted to RPC	06/09/2013	
RPC Opinion date and reference	20/09/2013	RPC13-MOJ-1867(2)
Overall Assessment	AMBER	
<p>RPC comments</p> <p>The IA is fit for purpose. However, the IA lacks monetisation of costs and benefits of the options in the proposal at this stage. The Department should ensure that the consultation period is used to provide a robust estimate of the impacts on business and civil society organisations. The Department’s assessment on the impact of the proposals on small and micro-businesses should be developed following consultation drawing on the responses of small business.</p>		
<p>Background (extracts from IA)</p> <p>What is the problem under consideration? Why is government intervention necessary?</p> <p><i>“Whilst the current processes within the [Office of the Public Guardian] OPG deliver a service to the customers that is in line with the requirements of the Mental Capacity Act 2005 (MCA), this consultation looks to improve this service still further for our customers and support the Government’s ‘digital by default’ agenda. The forms are seen as unduly complex and liable to cause errors to be made, deputies have said that they wish for more upfront interaction with the OPG to ensure they get things right from day one and the OPG needs to ensure that its fees always reflect the cost of the service that is offered. Without government intervention, the OPG would still be performing to the required standard but the customer would not be receiving the best possible service.”</i></p> <p>What are the policy objectives and the intended effects?</p> <p><i>“This consultation looks to improve the service that the OPG offers its customers. The new forms are intended to cut down on errors and hence reduce the number of people having to pay a resubmission fee. In the area of supervision the OPG is looking to ensure that Deputies are provided with the right level of support from day one and the intended effect is that that will lead to fewer investigations and issues with Deputies later on. The proposed changes to fees are to ensure they accurately reflect the cost of each service offered to customers and the changes to the register mean that the OPG will allow access to urgent requests for information from trusted 3rd parties, whilst maintaining safeguarding levels.”</i></p> <p>What policy options have been considered, including any alternatives to</p>		

regulation? Please justify preferred option

“Option 1: Forms. We have considered not changing the forms, but that would mean the forms were not optimal for our customers, based on current error rates and in depth user testing that has taken place.

Option 2: Fees. The two policy options considered are to do nothing or to ensure that the fees for the OPG accurately match the cost of that service to the OPG. We also wish to ensure that all people have access to to current available fees and hence are proposing changes to the criteria under which a resubmission fee can be charged .

Option 3: Digital Access to the Register. Currently the register can only be accessed by a paper based request system. The policy option here is to allow electronic access to first tier searches of the database and electronic access to a greater level of data for accredited third parties.

Option 4: Supervision of Deputies. We need to ensure that we continue to have a supervision regime that meets the needs of our deputies, ensures that adequate protections are in place for the person lacking capacity and is scalable to deal with supervising increasing numbers of deputies in the future. Any new regime also needs to be consistent with the requirements of Article 12.4 of the UN Convention on Disabilities. As a result, the option in relation to supervision that we wish to take forward is to introduce a new supervisory regime and online system, based on a proportionate assessment of risk. The do nothing option is not viable as it will not fulfill these key drivers.

Option 5: Digital Lasting Power of Attorney (LPA): The two policy options here are to continue with implementing a partially digital LPA process, or to consult on a fully digital LPA as the future plan for the OPG. This is, however, dependent on primary legislation.”

Identification of costs and benefits, and the impacts on business, civil society organisations, the public sector and individuals, and reflection of these in the choice of options

Estimate of costs and benefits to business of the proposal: The IA does not include the monetisation of costs and benefits of the options in the proposal. Some of the options are at an early stage of development requiring stakeholder views. However, the Department should ensure that a robust assessment of the impacts of the proposal on business and civil society organisations can be made using data provided by stakeholders following consultation.

Comments on the robustness of the Small & Micro Business Assessment (SMBA)

The proposals regulate business and are intended to come into force after 1 April 2014 and therefore the SMBA is applicable.

The SMBA is sufficient for the stage of development at this time. However, the Department should develop its analysis of the impact of the proposals on small and micro businesses specifically, and explain why the burden is not believed to be

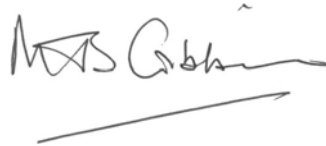
disproportionate using responses from stakeholders at consultation.

Comments on the robustness of the OITO assessment.

The IA says that this is a regulatory proposal which is in scope of OITO and would have a net benefit to business (an 'IN' with Zero Net Cost). Four of the five options appear to be out of scope. Option 4 (supervision of deputies), is in scope of OITO as it will introduce burdens on business. Based on the evidence presented, taking into account the Department's own recognition that elements of the proposal are at an early stage of development, the OITO assessment appears consistent with the current Better Regulation Framework Manual (paragraph 1.9.12) at this stage, and provides a reasonable assessment of the likely direction of impacts. However, the OITO assessment must be revisited following consultation as further development of the options may have an effect on the OITO status of the proposal.

Furthermore, the impact of the proposal on business and civil society organisations, and the evidence supporting the estimated Equivalent Annual Net Cost to Business will have to be revisited following consultation, and strengthened so that it can be validated at final stage.

Signed

A handwritten signature in black ink, appearing to read 'Michael Gibbons', with a long horizontal line extending to the right below the signature.

Michael Gibbons, Chairman