 Regulatory Policy Committee	Opinion	
Impact Assessment (IA)	Insolvency practitioner fees regime	
Lead Department/Agency	Department for Business, Innovation and Skills	
Stage	Consultation	
IA Number	Not provided	
Origin	Domestic	
Expected date of implementation (and SNR number)	6 April 2015 (SNR9)	
Date submitted to RPC	4/12/2013	
RPC opinion date and reference	17/1/2014	RPC13-BIS-1970
Overall assessment	AMBER	
RPC comments		
<p>This clear and well-presented IA is fit for purpose. A non-regulatory option of a voluntary code is included, but the IA says this is unlikely to be satisfactory. The IA should provide a more detailed discussion of the likely costs and benefits of this option so that consultees are effectively informed and, as appropriate, explain why this option is not considered feasible.</p>		
Background (extracted from IA)		
<p><b>What is the problem under consideration? Why is government intervention necessary?</b></p> <p><i>A report by the OFT [Office of Fair Trading] in 2010 into the market for corporate insolvency practitioners (IPs), and a recent review of insolvency practitioner (IP) fees by Professor Kempson, found that the market does not work sufficiently where unsecured creditors are left to ‘control’ an office-holder’s fees and remuneration, which occurs in just over a third of cases. This becomes apparent where there are funds remaining after paying secured creditors, and unsecured creditors bear the costs of the office-holder’s fees. Both reports found that fees charged to unsecured creditors can be higher due to being in a weaker bargaining position than secured creditors. This can result in over charging by IPs and inefficiencies in administering cases, which leads to fees being higher than they might otherwise have been. This leads to a transfer of resources from unsecured creditors to IPs that, for reasons of both fairness and efficiency, the Government wish to remove.</i></p>		
<p><b>What are the policy objectives and the intended effects?</b></p> <p><i>To remove the harm caused by the market failure. Removing this harm, would improve returns to unsecured creditors; and improve the reputation of, and confidence in, the insolvency profession.</i></p>		
Options		
<p>1. <i>Do nothing – this would not address the market failure identified by the OFT and Professor Kempson.</i></p>		

2. *Introduce a package of measures to address the fee structure and regulatory regime. These aim to change the statutory basis for IPs' remuneration where unsecured creditors have control, and explicitly bring fee complaints within the current complaints process. This is the preferred option as it addresses the market failure and is consistent with Professor Kempson's recommendations.*
3. *Alternative to regulation - work with IPs and the regulatory bodies to introduce a voluntary code to change the basis for IPs' remuneration, ensuring that the regulatory bodies deal with complaints about fees.*

### **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**

The IA explains its assumptions clearly throughout, and it indicates areas where the intention is to gather further evidence during the consultation. The IA also makes reference to a transfer of resources between insolvency practitioners and unsecured creditors and records these correctly as both costs and benefits, but with no net impact, for net present value purposes.

The IA includes a non-regulatory option but this appears to have been discounted. To ensure that consultees are effectively informed, the IA should nevertheless include a more detailed discussion of the potential costs and benefits of this option and, as appropriate, explain why this option is not considered feasible.

The proposals have been influenced by a report from Professor Kempson, although it is not entirely clear whether all of Professor Kempson's recommendations are reflected completely in the proposals. It would be helpful to state this explicitly within the IA and, if relevant, an explanation should be provided as to why some are not being taken forward.

The IA would benefit from an explanation of the sector and status of the regulated professional bodies (RPBs).

### **Comments on the robustness of the small & micro-business assessment (SaMBA)**

The proposals regulate business and are intended to come into force after 1 April 2014. A SaMBA is, therefore, applicable.

The IA includes a SaMBA. It is not proposed to exempt small or micro-businesses, but the IA provides a justification for this, supported by appropriate level of analysis.

The assessment explains that the proposed change to ensure that RPBs consider fee-related complaints is not targeted directly at insolvency practitioners. Instead, the requirement and cost would be binding on seven independent RPBs, none of which is a micro-business, and only one a small business.

The assessment concludes that *"It would be inappropriate and unworkable to distinguish between the RPBs on the basis of scale as different complaints systems would then apply to different IPs depending on the status of their licensing body."*

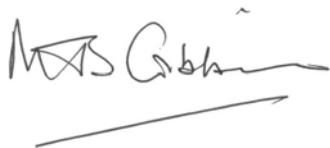
*This would create confusion and uncertainty for debtors, creditors and other stakeholders in insolvency cases. In addition, it is likely that at least some IPs would switch to an institution outside the scope of considering complaints ... which would be to the further detriment of perceptions around the insolvency profession generally."*

The assessment also explains that the proposed changes to the fees structure would affect both insolvency practitioners (IPs) and creditors insofar as there would be a transfer of benefit from IPs to creditors. It goes on to say that the vast majority of creditors can be expected to be small or micro-businesses, so it would be detrimental to unsecured creditors (the group which it is intended should benefit from the proposals) if small and micro-businesses were exempted from the proposals. The IA should also consider whether there is any possibility of costs falling on IPs which are small or micro-businesses.

#### **Comments on the robustness of the OITO assessment**

The IA says that this is a regulatory proposal that is in scope of OITO and would impose a direct net cost to business (an IN). Based on the evidence presented, this assessment of the likely direction of impacts is reasonable and is consistent with paragraph 1.9.10 of the Better Regulation Framework Manual (July 2013). The evidence supporting the estimated equivalent annual net cost to business figure will have to be strengthened so that it can be validated at final stage.

**Signed**

A handwritten signature in dark ink, appearing to read 'Michael Gibbons', with a long horizontal line extending from the end of the signature.

**Michael Gibbons, Chairman**