

A new fee structure for official receiver services

Department for Business, Innovation and Skills (Insolvency Service)

RPC rating: fit for purpose

The IA is now fit for purpose as a result of the Department's response to the RPC's initial review. As first submitted, the IA was not fit for purpose.

Description of proposal

The proposal will increase the fees charged by official receivers to meet the full cost recovery principles of managing public money. Without changes to the fees structure there is expected to be an operational deficit for the insolvency service during 2016/17 and in future years. Following a review of costs, the Department proposes to increase seven existing fees and to introduce four new fees which will relate to existing work undertaken by official receivers.

The IA explains that, since 2009, the volume of cases has been falling for the three types of case that will be affected by the fee changes. Debtor petitioned cases have fallen from 63,804 to 11,423 in 2015; creditor petitioned cases from 10,866 to 4,373; and compulsory company winding up orders from 5,643 to 2,874. Uncertainty regarding the future trajectory of case numbers, and the inability to reduce some overhead costs quickly enough, means that the fixed cost per case has risen significantly. So, while the Insolvency Service has made significant cost reductions (halving staff and estate costs), the IA argues that it is not possible to meet full cost recovery without the proposed fee increases.

Impacts of proposal

The estimates in the IA are based on an expected case load of 13,500 during 2016/17 (8,000 debtor petitioned cases; 3,500 creditor petitioned cases; and 2,000 compulsory winding up orders). The Department has analysed cases from 2011 to 2014 to estimate the effect of the fee changes. This has included an analysis of the likely effects on asset realisation, both to estimate the likely effect on income from charges that relate to the level of assets realised in a case, but also to estimate the expected impacts of the proposal on creditors.

The fee and charge changes are expected to result in an additional income to the Insolvency Service of £7.9 million during 2016/17. Around £4.4 million of this is expected to be as a result of the increased costs of petitioning or applying for

winding up orders. Over half of the £4.4 million cost is expected to be to HMRC or local government. The 'official receivers general fee', which will be capped at £5,000 per case to reduce the existing cross subsidy from asset-rich cases to asset-poor cases, is expected to result in an increased income of £1.9 million. With the remaining £1.6 million cost to business resulting from increased charges against the realised assets in cases.

The IA explains that the official receivers fee has been classified as a tax and is not included in the estimated equivalent annual net cost (EANCB). This is on the basis that it is an identified and deliberate cross subsidy that will be supported by the relevant tax processes (for example, being accompanied by a section 102 order). The costs to HMRC and local government of petition charges are also not included. The IA also explains that, in line with previous IAs on changes to insolvency regulation, 90% of the assets realised in insolvency cases benefit business creditors with the EANCB calculated on this basis.

The RPC is able to validate the EANCB of £3.4 million, and can confirm that, for the purposes of the business impact target, the proposal is not considered to be a regulatory provision and will not score against the target.

Quality of submission

Following the Department's response to the RPC's initial review of the IA, the IA is now fit for purpose. The initial review highlighted that, as the proposal was not eligible for the fast track, the IA must contain a small and micro business assessment and present a robust EANCB for the regulatory elements of the proposal. It would appear that these issues arose as a result of a lack of clarity regarding the better regulation framework requirements. The proposal is a significant regulatory change that is not considered to be a 'regulatory provision' for the purposes of the business impact target, an area of the framework which has changed under the business impact target.

The revised IA now presents the expected impacts of the different elements of the proposal, rather than just headline figures. It also provides an estimate of the proportion of those costs that relate to the change in tax. The estimated costs to business that are related to changes in regulation are now clearly presented.

Small and micro business assessment

As initially submitted, the IA did not contain a small and micro business assessment. As a significant proportion of creditors could be expected to be small or micro businesses, charges that directly reduce the level of assets realised to the benefit of smaller businesses appeared to have the potential to have a significant effect on

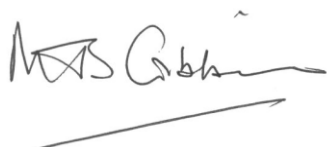
those businesses. The revised IA discusses these potential impacts. In particular it highlights that the changes are likely to have more significant impacts on those creditors prioritised in existing legislation, primarily secured creditors. As secured creditors are not likely to be small or micro businesses, and the changes in returns to unsecured creditors are likely to be small, the Department's assessment is that any costs to smaller businesses are not likely to be disproportionate.

Departmental assessment

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| Classification | Not a regulatory provision (fees and charges) |
| Equivalent annual net cost to business (EANCB) | Not provided (initial estimate) £3.4 million (final estimate) |
| Business net present value | Not provided |
| Societal net present value | Zero |

RPC assessment

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| Classification | Not a regulatory provision (fees and charges) |
| EANCB – RPC validated ¹ | £3.4 million |
| Business Impact Target (BIT) Score ¹ | Not applicable |
| Small and micro business assessment | Sufficient |



Michael Gibbons CBE, Chairman

¹ For reporting purposes, the RPC validates EANCB and BIT score figures to the nearest £100,000.