 Regulatory Policy Committee	Opinion	
Impact Assessment (IA)	Bankruptcy and insolvency fees increase order 2015/16	
Lead Department/Agency	Department for Business, Innovation and Skills	
Stage	Final	
IA number	BIS INSS015	
Origin	Domestic	
Expected date of implementation	6 April 2015 (SNR9)	
Date submitted to RPC	15 December 2014	
RPC opinion date and reference	9 February 2015	RPC14-BIS-2301
Departmental assessment		
One-in, Two-out (OITO) status	Out of scope	
Estimate of the equivalent net cost to business (EANCB)	N/A	
RPC overall assessment		
GREEN		
RPC comments		
<p>The IA is fit for purpose. It assesses adequately the costs and benefits of increasing case deposits and administration fees, and changes to the secretary of state fee bands.</p> <p>The proposals are out of scope of OITO because they relate to changes in fees and charges that do not alter the regulatory scope.</p>		
Background (extracted from IA)		
What is the problem under consideration? Why is government intervention necessary?		
<p><i>The costs of the Official Receiver administering bankruptcies and companies in compulsory liquidation are recouped from deposits payable to enter the insolvency process, and charges against assets realised in insolvency cases. The Insolvency Service is currently incurring operational deficits due to continuing falls in the number of individuals entering bankruptcy and companies going into compulsory liquidation. The number of bankruptcy cases has reduced significantly from 67,428 in 2008 to 24,571 in 2013; and the number of cases continues to fall.</i></p> <p><i>Although the Insolvency Service continues to reduce costs (e.g. a reduction in staff and estate costs of £32m and £5m respectively between 2010/11 and 2014/15), overhead and staffing reductions have not been able to keep pace with the steep decline in case load, resulting in higher fixed costs per insolvency case.</i></p> <p><i>The last significant changes in fees and deposits in April 2014 were intended to remove the operational deficit by 2015/16 but a sharper than forecast reduction in case loads has led to a shortfall in income. This deficit of around £3 million in 2015/16 means that, at present, tax payers subsidise the cost for creditors. Government intervention is, therefore, necessary to move the balance of payments from tax payers to creditors.</i></p>		

At present, after petition deposits are paid, the cost of administering a case (the administration fee) is recovered from assets realised by the Official Receiver, with any surplus funds being distributed to creditors. It is often the case, however, that there are insufficient assets to cover the administration fee and, in around 50 per cent of cases, there are no assets from which a payment toward the administration fee can be made. Where there are insufficient or no assets, the administration costs are covered by a separate secretary of state fee, charged on those cases with sufficiently high asset levels. This means that there is cross-subsidisation between insolvency cases to cover costs.

What are the policy objectives and the intended effects?

The main objective is to increase fees in order to eliminate Official Receiver deficits, and to cover costs. The intended effect is a shift from taxpayers subsidising creditors and the operational deficit to increasing income to aid full cost (but no more) recovery.

The other objective is to reduce the reliance on cross-subsidisation of cases and arrange for income from individual cases to match their costs more closely. The intended effect of this is to create a fairer and more transparent funding structure for official receiver cases.

Comments on the robustness of the OITO assessment

The IA states that the proposals are out of scope of OITO because they relate to changes in fees and charges, but do not alter the regulatory scope. The legal basis for the fees relating to company and individual insolvency proceedings is in sections 414 and 415, respectively, of the Insolvency Act 1986. The Act provides that, in respect of the performance by the Official Receiver or the Secretary of State of functions under the Act, such fees shall be paid as the Lord Chancellor may, with the sanction of HM Treasury, by order direct.

As the proposals are provided for in existing legislation and do not alter the regulatory scope, the RPC considers reasonable the Department's conclusion that the proposals are out of scope of OITO. This is consistent with paragraph 1.9.8 viii of the Better Regulation Framework Manual (July 2013).

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

The proposals do not increase the scope of regulation on business. A SaMBA is, therefore, not required.

The IA, nevertheless, includes a SaMBA. It explains that, overall, business creditors will be better off following the proposed changes with more assets being returned to creditors than they will have to pay in higher deposits and fees, of which only a small share would fall to small and micro-businesses. Exempting small and micro-businesses from the changes would prevent them from realising the benefits and would undermine a fundamental principle of insolvency legislation of treating equally all creditors within a given class. Not exempting small and micro-businesses seems, therefore, to be a reasonable approach.

Quality of the analysis and evidence presented in the IA

The impact assessment explains that the Department proposes to increase certain insolvency case deposits and administration fees to offset the costs of administering insolvency cases. This would help to remove, by the end of 2015/16, the Insolvency Service's current operational deficit. The proposals would also change the secretary of state fee bands, which would mean that creditors receive larger dividend payments, following completion of insolvency proceedings.

The Department proposes to increase:

- bankruptcy debtor petition deposits from £525 to £570. This will cost petitioners between £0.53 million and £0.57 million each year;
- bankruptcy creditor petition deposits from £750 to £825. This will cost petitioners between £0.26 million and £0.27 million each year;
- compulsory (company) winding-up deposits from £1,250 to £1,350. This will cost petitioners between £0.37 million and £0.39 million each year;
- case administration fees charged in compulsory (company) winding-up cases from £2,400 to £2,520; and
- case administration fees charged in all bankruptcy cases (both debtor and creditor petition bankruptcies) from £1,850 to £1,990.

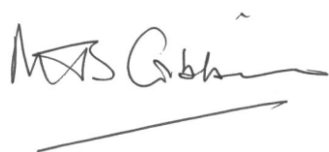
Overall, the changes to administration fees will increase income to the Insolvency Service by between £1.99 million in 2015/16 and £2.58 million in 2017/18. This additional cost will be borne by creditors and debtors.

An additional secretary of state fee is payable in bankruptcy and compulsory liquidation cases with significant assets. The fee payable is, in five bands, as a proportion of the assets realised.

The proposals lower, by 25 per cent, the proportion of the assets taken in two of the bands and, hence, will reduce the overall amount of money taken by the Insolvency Service from creditors. The Department estimates that creditors will, therefore, in aggregate, benefit by between £2 million and £3 million each year.

The Department has not fully quantified the cost that will be incurred directly by businesses, but has indicated that almost all affected debtors are individuals and around 40 per cent of affected creditors are businesses (as HMRC and local authorities are also significant creditors). The IA would be improved by specifically identifying the impact on business.

Signed



Michael Gibbons, Chairman