

<b>Title:</b> Increase fees for applications for a grant of probate  <b>IA No:</b> MoJ010/2016  <b>RPC Reference No:</b> N/A  <b>Lead department or agency:</b> Ministry of Justice  <b>Other departments or agencies:</b> HM Courts and Tribunals Service	<b>Impact assessment (IA)</b>			
	<b>Date:</b> 24/02/2017			
	<b>Stage:</b> Final			
	<b>Source of intervention:</b> Domestic			
	<b>Type of measure:</b> Secondary Legislation			
<b>Contact for enquiries:</b> probatefeespolicy@justice.gsi.gov.uk				
<b>Summary: Intervention and Options</b>				<b>RPC Opinion:</b> N/A

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB on 2014 prices)	In scope of One-In, Three-Out?	Measure qualifies as
-£0.3m	n/a	n/a	Not in scope	N/A

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

The courts and tribunals play a vital role in an effective and functioning democracy and support the economy via a wide, diverse and integrated range of services for the public. This means that the courts and tribunals need to be sufficiently funded. The running costs of HM Courts and Tribunals Service (HMCTS) in England and Wales were £1.9 billion in 2015-16 although only £700 million in fee income was recovered, representing a net subsidy from the taxpayer of around £1.2 billion. The government is working closely with the Senior Judiciary and has established a programme of reform for HMCTS to deliver a modernised, leaner and more efficient courts and tribunals system which will help to reduce the operating costs of HMCTS. But, as only so much can be done through increasing efficiency alone, more ambitious proposals for fee income are needed to reduce the taxpayer subsidy.

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

The Ministry of Justice's (MoJ's) long term aim is to protect access to justice by making sure that the courts and tribunals are adequately resourced while reducing the overall taxpayer subsidy to HMCTS. The financial situation is such that the MoJ will need to become more ambitious in terms of fee income but the aim for any such reforms should be to ensure that any resulting structures are fair. The government believes that a structure where probate fees are in proportion to the net value of an estate is fair and progressive. It is also necessary and fair that those court users who can afford to pay more, should do so.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option.**

The following options were considered:


- Option 0: Do Nothing. Maintain the current fee structure for probate.
- Option 1: Increase the fees for applications for grant of probate while raising the threshold at which an estate attracts such a fee from £5,000 to £50,000

Following the consultation, the government intends to implement Option 1 because it best achieves the policy objective of ensuring that we have a properly funded courts and tribunals system. It also proposes a new fees structure which is fairer for applicants as the fee will be based on a net value of an estate which will only apply to estates worth £50,000 and above. Furthermore, under this option, the highest fees will never exceed 1% of the value of the estate while around 92% of estates would pay £1,000 or less.

**Will the policy be reviewed? It will not be reviewed. If applicable, set review date:**

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro No	< 20 No	Small Yes	Medium No	Large No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> N/A		<b>Non-traded:</b> N/A

**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 Minister:  Date: 24/02/2017

# Summary: Analysis and Evidence

# Policy Option 1

**Description:** Increase fees for non-contentious probate proceedings

Price Base Year 2017/18	PV Base Year 2017/18	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: -0.3

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	1		
High			
<b>Best Estimate</b>		<b>0.3</b>	<b>320</b>

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

Transitional costs to HMCTS (making minor adjustments to IT systems and reissuing forms and guidance), are expected to be up to £0.3m. The additional ongoing cost to court users from paying increased probate fees is estimated to be around an average of £320m per annum (annual average in 2017/18 prices).

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

There may be some minor transitional costs related to HMCTS staff familiarising themselves with the changed fees, and for banks and building societies if they decide to issue updated guidance on when to release funds.

Familiarisation costs for individuals and legal service providers who apply for probate are expected to be negligible. Applicants may, however, face a cash flow cost as probate fees are paid upfront usually by the executor or administrator (referred to as personal representatives in this document). This cost will be recouped once the grant of probate, or letter of administration, has been issued and the estate has been released.

The wider impact on legal service providers (mainly solicitors) may vary dependent on the behavioural change of personal representatives. If the increase in fees encourages personal representatives to finance the probate fee by saving costs in other areas of the process, there may be a reduction in the workload of legal service providers. If, however, personal representatives appoint solicitors to act as their representative as a means for them to pay the increased fees, this may increase their workload. Solicitors or other professionals may require funds to be paid on account first and therefore may be more hesitant to fund fees for estates of higher net value.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	1		
High			
<b>Best Estimate</b>		<b>0</b>	<b>320</b>

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

HMCTS would benefit from increased fee income of around £320m per annum. The subsidy from the taxpayer to HMCTS would be reduced by a similar amount.

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

None.

### Key assumptions/sensitivities/risks

Users may change their behaviour and 'pull forward' their case to avoid the increased fee (or for users where the fee reduces they may "push back" their case). Our central scenario calculations factor in a 10% level of optimism bias to account for any potential fall in income. While our best estimate of income is around an average of £320m per year, the true figure may differ depending on how users change their behaviour.

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m
Costs:	Benefits:	Net:	
N/A	N/A	N/A	N/A

# Evidence Base

## A. Background

1. In England and Wales<sup>1</sup>, obtaining a grant of probate or letter of administration is the process by which a personal representative demonstrates his or her authority to deal with the property, money and possessions (the 'estate') of the deceased after their death. It is applied for in the probate registry (Family Division) and is usually sought by the executor of the will of the deceased or a person, or the administrator where there is not a valid will.
2. The current fees charged for a grant of probate are £215 if an application is made by an individual (40% of total applications<sup>2</sup>) and £155 for where it is made by a solicitor (60% of all applications)<sup>3</sup>. A 'personal' application is charged a higher fee compared to those submitted via a solicitor because of the additional administrative work the Probate Service has to undertake to process these types of application. The existing fees reflect average administration costs and currently generate around £45m per annum in income for HM Court and Tribunal Service (HMCTS).
3. Only around 50% of deaths lead to an application for probate as any estate worth below £5,000 net does not pay a fee. In addition, the ownership of some assets (e.g., houses) can pass (usually to a surviving spouse) without a grant of probate when they were owned as beneficial joint tenants. Some assets can also be released without a grant of probate and some banks may allow the personal representative to access the account of the deceased to the value of £25,000 to pay other death-related expenses before the assets in the estate have been realised. Individual banks will have their own policies with regard to this and therefore, in practice, these procedures may vary between organisations.
4. The government consulted on the proposals in this Impact Assessment (IA) for six weeks from 18th February to 1st April 2016. This IA assesses the impact of the Government's preferred approach based on responses to the consultation and further evidence which was obtained during the consultation period.

## B. Policy Rationale and Objectives

5. The Ministry of Justice's (MoJ) policy aim is to ensure that HMCTS is resourced in such a way that access to justice is protected, whilst reducing the cost to the general taxpayer. The cost of HMCTS in 2015-16 was £1.9 billion, of which only £700 million was recovered through fee income, leaving a net cost of £1.2 billion to the taxpayer. The government believes this is unsustainable meaning that the MoJ must look at other ways to raise income to secure the financing of HMCTS in the future.
6. Furthermore, the current system of flat fees also means the amount paid bears no relation to the value of the estate, resulting in smaller estates paying the same as larger ones. The government believes that a structure where probate fees are more proportionate to the net value of an estate would be fairer and more progressive, and that those court users who can afford to pay more, should do so.

## C. Description of Options Considered

7. To meet these policy objectives, the following two options are considered in this IA:
  - **Option 0 – Do Nothing. Maintain the current fee structure for non-contentious probate.**
  - **Option 1 – Introduce a new fee structure for probate applications and increase the threshold from £5,000 to £50,000.**

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<sup>1</sup> Scotland and Northern Ireland have separate processes.

<sup>2</sup> Based on 13 week data collection from January to April 2016.

<sup>3</sup> The Non-Contentious Probate Fees (Amendment) Order 2014 - [http://www.legislation.gov.uk/uksi/2014/876/pdfs/ukxi\\_20140876\\_en.pdf](http://www.legislation.gov.uk/uksi/2014/876/pdfs/ukxi_20140876_en.pdf)

## Option 0

8. Under the Do Nothing option the current fee structure would remain in place. In steady state, we estimate that probate fees would generate around £45m per year. As the Do Nothing option is compared to itself, the costs and benefits are necessarily zero as is its net present value (NPV).

## Option 1

9. Under this option, a new fee structure will be introduced for individual personal representatives, solicitors or other bodies such as charities, who apply for a grant of probate. The fees will be banded by the net value of the estate, with the highest fee payable being capped at 1% (£20,000) of the net value of estates worth £2m and above. The proposed fee structure is shown in Table 1, alongside the current personal application fee which we consider to be the most appropriate comparator.

**Table 1: Proposed fee bands for probate applications**

Value of estate (before inheritance tax)	Existing fee <sup>4</sup>	Proposed fee
Below £50,000 or exempt	£215 <sup>5</sup>	£0
Exceeds £50,000 but does not exceed £300,000	£215	£300
Exceeds £300,000 but does not exceed £500,000	£215	£1,000
Exceeds £500,000 but does not exceed £1m	£215	£4,000
Exceeds £1m but does not exceed £1.6m	£215	£8,000
Exceeds £1.6m but does not exceed £2m	£215	£12,000
Above £2m	£215	£20,000

10. The seven fee bands will create a more progressive structure whereby higher value estates will generally pay more compared to those of lower value. The fee will be based on the net value of an estate after outstanding debts but before any inheritance tax liabilities have been deducted.
11. The proposal also includes raising the threshold for when a grant of probate is required from £5,000 to £50,000. This would result in an estimated additional 25,000 estates per annum not being subject to a fee. The majority (55%) of the remaining estates will pay a fee of £300, which is a modest increase from the current fee of £215 for a personal application.
12. The proposal will also remove probate fees from the general remissions scheme. This is because, unlike other civil and family fees, a personal representative is able to recover the fee after the estate has been released. The personal representative will be able to access the cash funds of the estate and use them to pay the fee. Based on HMRC statistics, we calculate that the average proportion of an estate which is held in cash is 25%<sup>6</sup>. Furthermore, to make sure that access to justice is not denied and that no personal representative is put in a position of being liable for a fee they cannot pay, the discretionary power of the Lord Chancellor to grant exceptional fee remissions will remain in place, alongside a provision to apply initially for limited access to the estate for payment of the fee.
13. Following the consultation, the preferred option is Option 1, as this best meets the policy objectives.

## D. Affected Stakeholder Groups, Organisations and Sectors

14. These reforms will primarily affect individuals making an application for a grant of probate. A list of all the main groups that would be affected is show below:

<sup>4</sup> £215 is the personal application fee, but there is also a fee of £155 charged for a grant of probate through a solicitor. An application would not be subject to both these fees.

<sup>5</sup> Fees are currently exempt from estates worth £5,000 or less. The proposed exemption threshold will increase to £50,000

<sup>6</sup> <https://www.gov.uk/government/statistics/inheritance-tax-statistics-table-124-assets-in-estates-by-range-of-net-estate-and-tax-due>

- Individuals – those personal representatives who apply for a grant of probate, and those individuals who are beneficiaries of the estate;
- HMCTS – who operate the Probate Service;
- Taxpayers – who subsidise HMCTS as overall HMCTS income falls below its overall costs;
- Legal services providers who supply probate-related services;
- Banks and building societies who provide access to funds for personal representatives; and
- Charities who act as personal representatives or beneficiaries from the estate.

## E. Cost and Benefit Analysis

15. This IA identifies both monetised and non-monetised impacts on individuals, groups and businesses in England and Wales with the aim of understanding what the overall impact on society might be from implementing the proposed fee structure. The costs and benefits of each proposal are compared to Option 0, the Do Nothing or ‘baseline’ case, where probate fees are maintained at their current levels.

### Key Assumptions

#### *Methodology*

16. We present the average annual costs and benefits throughout this IA, although our sensitivity analysis does look at factors that may have an impact on the expected fee income. These factors include any behavioural impacts from the new fee structure by those applying for a grant of probate or any potential ‘pull forward’ of applications in the period immediately prior to the fee change, where applicants seek to pay the existing fees (see the section below on risks and sensitivity).

17. To estimate the additional fee income, we have used HM Revenue and Customs (HMRC) data on estate volumes and net values in England and Wales. These projections are based on inheritance tax forecasts used for the 2016 Autumn Statement after adjustments for the value of any gifts made in the seven years prior to death (which do not form part of an estate for probate purposes). The proposed fees were then multiplied by the number of eligible estates in each fee band to give the predicted additional income for HMCTS after the current probate fee income has been deducted.

#### *Demand*

18. Court user behaviour (demand) may change in response to an increase in court fees. Where this occurs the effect is known as the price elasticity of demand. In the case of probate services it is unlikely that demand will change in response to the planned fee changes because the demand is related to the number of deaths, which is relatively stable in England and Wales, and because there are no alternatives available for people to gain access to the deceased’s estate without applying for a grant of probate.

19. These considerations suggest that the volume of probate applications will be relatively price inelastic and that existing caseloads should not change substantially in response to the proposed fee changes. Nonetheless, to factor in a degree of risk that should account for any unforeseen changes in demand or income, the income estimates include a 10 percent<sup>7</sup> level of optimism bias. These assumptions are explored further in the risk and sensitivity section below.

#### *Limited Access and Remissions*

20. We assume there will be no remissions apart from those granted in exceptional circumstances. This is because we believe that most personal representatives will be able to access the bank account(s) of the deceased in order to cover the cost of the new probate fees, or able to access products such as loans secured against the value of the estate. Allowing remissions in exceptional circumstances, however, should ensure that no one is denied access to justice or that any personal representative is put in a position of being liable for a fee they cannot pay. The total value of any remissions granted under such circumstances has not been quantified but is not thought to be substantial.

<sup>7</sup> In the first year of implementation, optimism bias is 15%.

## *Net Present Value*

21. The NPV is calculated over a ten-year period, under the assumption that the proposed fees do not increase in line with inflation. Fees are not included in the overall NPV as they represent a transfer payment between the individuals who apply for probate and HMCTS.

**Option 1 – Introduce a new fee structure for applications for a grant of probate. The threshold at which an estate will attract a probate fee will increase from £5,000 to £50,000.**

## **Costs of Option 1**

### Transitional costs

#### *HMCTS*

22. HMCTS expects to incur costs for making amendments to court IT systems and those related to court staff having to spend some time familiarising themselves with the new fees. There may also be transitional costs if there is a pull forward (or push back) of cases (see Section F), as staff may need to be brought in on a temporary basis to deal with the spike in caseload. These one-off transitional costs for HMCTS are expected to be less than £0.3m.

#### *Legal services providers and those individuals applying for probate*

23. There may be familiarisation and awareness costs incurred by individuals and legal services providers who apply for probate. These have not been monetised but are not expected to be significant.

#### *Banks and building societies*

24. There may be transitional to costs to the British Banking Association and the Building Societies Association from updating guidance to their members relating to the release of funds to pay for bereavement expenses, which the new probate fees will form part of. There may also be familiarisation costs to staff in branches of banks and building societies who will need to understand the new proposals and updated guidance. These costs have not been monetised but are not expected to be significant.

### Ongoing costs

#### *Individuals or legal services providers who apply for probate*

25. Table 1 (above) shows what fee an estate would pay under the current and new probate scheme. Under Option 1, if an estate is valued at £300,000 or under, court users would be subject to a maximum additional cost of £85. On the other hand, if an estate is valued at over £2m, they would be subject to a maximum additional cost of £19,785. To calculate the income from the new fee structure, we have multiplied the proposed fees by the number of estates in each band based on data from HMRC. Given the current court fee income from making grants of probate, and under the fee proposals set out in Table 1, we estimate the additional costs to users of the Probate Service will be on an average £320m per year.

26. Of the approximate 270,000 applications for a grant of probate per annum, around 60% are currently made by solicitors. Changes to the probate fee structure may lead to a reduction in work levels for probate solicitors if personal representatives look to save money elsewhere in the process to finance the probate fee, and therefore apply in person rather than through a solicitor.

27. There may, however, be benefits to solicitors if personal representatives become more likely to appoint a solicitor as their representative if the solicitor is able to cover the fee in the short term. This may provide a short term cash-flow issue for solicitors, but could have the longer term effect of increased workloads. There is a risk though that given the increase in fees, smaller firms may not be able to fund this.

28. Data do not exist to be able to estimate these potential impacts, and therefore they have not been monetised.

#### *Costs to banks and building societies*

29. There may be administrative costs to banks and building societies if personal representatives are more likely to ask for access to the deceased's accounts in order to pay the probate fee. This could happen for those estates where the proposed fee is significantly higher than under the current arrangements. We do not, however, expect these costs to be significant because banks and building societies already have policies in place to allow access to funds where necessary, so the additional burden should be small.

#### *Costs to beneficiaries of the deceased's estate*

30. Beneficiaries of the estate may incur a cost if, because of the increased probate fees, they receive a smaller proportion of the deceased's estate. This will mainly affect relatives of the deceased, but may also impact charities<sup>8</sup>. This impact is not expected to be significant because the level of the probate fees will not exceed 1% of the net value of the estate.

### **Benefits of Option 1**

#### Ongoing benefits

##### *Benefits to HMCTS*

31. As a result of the proposed changes, we estimate HMCTS would benefit from additional fee income of around £320m per annum (average over the ten year appraisal period and in 2017/18 prices).

##### *Wider benefits to society*

32. Increasing fees for grant of probate above cost would reduce the net costs of operating HMCTS and, therefore, reduce the level of public subsidy provided to HMCTS.

### **Net impact of Option 1**

33. HMCTS is expected to incur transitional costs from implementing the new fee regime (estimated at up to £0.3m). Individuals and solicitors who apply for a grant of probate are also expected to incur negligible costs from familiarising themselves with the new fee structure. There may, however, be transitional costs to banks from producing updated guidance on whether to release an estates funds.

34. On an ongoing basis the proposals are expected to generate increased fee income for HMCTS of around £320m per annum. As the benefit to HMCTS will be offset by the additional cost to users of probate services, the ongoing net impact of the proposal is estimated to be minimal.

35. There may be ongoing benefits or costs to the providers of legal services depending on whether personal representatives use solicitors more or less, and banks and building societies may face extra administrative costs if personal representatives ask for access to the deceased's bank accounts more often.

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<sup>8</sup> Data from HMRC suggests that roughly 16% of estates leave something to charity, and of these estates, it is estimated they will leave around 25% of the value of the estate. These figures vary according to the value of the estate.

## F. Risks and sensitivity analysis

41. There are a number of potential behavioural effects that may occur as a result of implementing the government's preferred option. These effects may either increase or decrease the additional income stated in paragraph 34. To account for these risks, income estimates include a 15 percent level of optimism bias in year one, and a 10 percent level of optimism bias in all subsequent years. These risks are examined in more detail in the following paragraphs.

### *The pull forward effect*

42. Before any planned fee increase, there is a risk that court users will bring their applications forward to avoid paying the increased court fee. This can create a spike in caseloads, followed by a trough in the following months after which demand should return to normal levels. This 'pull forward' effect would only occur in the period surrounding a fee change and not impact on income in future years.

43. We examined the volume of probate applications made before and after the previous April 2014 fee change but found little evidence to confirm a pull forward effect, which may have been because these fee changes were of a relatively small size, and looked at evidence from fee changes for other case types but, due to the unique nature of probate applications, we did not think the experience seen in those jurisdictions were transferable to probate applications.

44. We have, however, used management information received from the Probate Service based on the time lag between date of death and when applications for probate are normally received<sup>9</sup>, and assumptions based on the proportion of applications that may 'pull forward' to present an illustration of the magnitude of any potential effects below. In particular, we assume that:

- If the date of death was within two weeks of the new fees being implemented, any applications received from this group would be unaffected. This is because these individuals would be unlikely to do this at a time when emotional factors will be foremost in their minds;
- For deaths occurring between the announcement of the new fee structure to two weeks prior to its implementation, 25% of all probate applicants made by individuals will be made earlier than otherwise in order to pay the lower fees; and
- 50% of probate applications by solicitors will be brought forward to before the new fees come into effect. This is because a solicitor is more likely to reprioritise their work to avoid the higher fees. It is likely they will have more information and a better understanding compared to an individual who personally applies for a grant of probate.

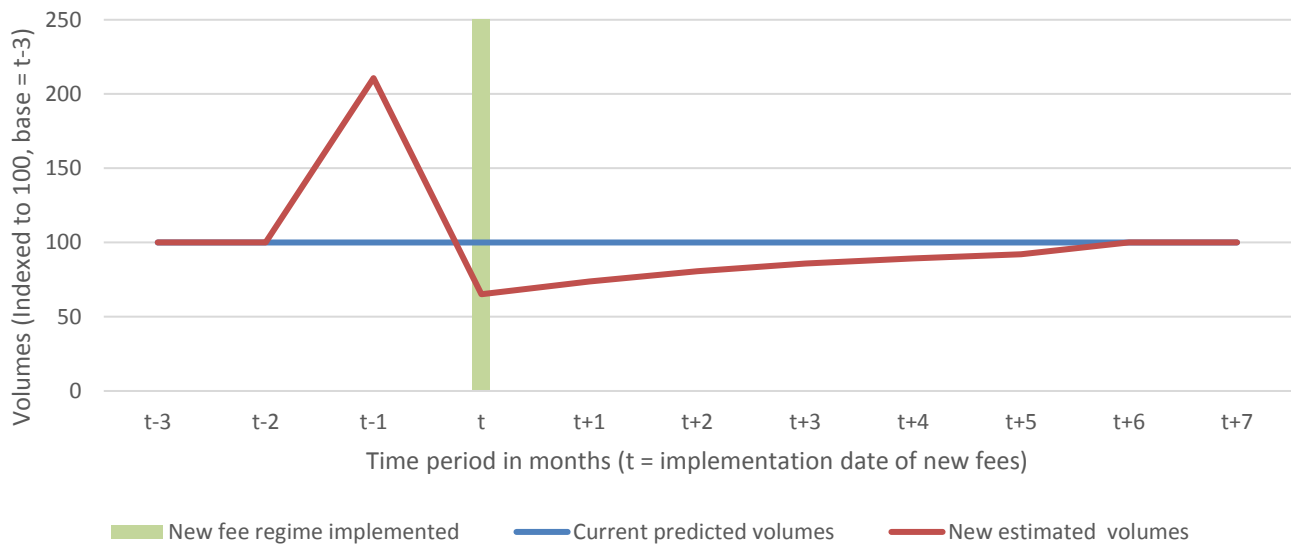
45. Figure 1 illustrates the predicted effect on demand from around the time when the new fee structure is announced. The green bar shows the date when the new fee structure is implemented while the blue line is used to compare what would happen if there were no changes to the number of applications. Examining the red line, the spike of applications demonstrates that applications, which would otherwise have been issued after time period "t", have been pulled forward so they incur the old fee. In the 5 months following implementation demand slowly returns to normal levels.

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<sup>9</sup> These data shows that on average it takes 2-3months for individuals or solicitors to submit their probate application, with around 15% taking less than 1 month and 20% greater than 6 months.



**Figure 1: The pull forward effect**



46. The impact on additional fee income is shown by the difference between the blue and red lines. In this example and based on the above assumptions, in the period after the new fees are implemented, there is a temporary fall in volumes (which equates to a fall in income) compared to what would normally be expected. There is also a small increase in volumes in the month before implementation, but this only partly offsets the initial loss of income caused by the pull forward.
47. Finally, there is also a possibility of a ‘push back’ effect, which is the opposite of the pull forward effect. Some applicants whose estates are valued between £5,000 and £50,000 may choose to delay applying for a grant of probate in order to benefit from the change in fees (i.e. delaying their application to get a free service). These cases only make up a small proportion of applications, so any impact on income is not expected to be substantial.

*Behavioural impact*

48. When the price of a good or service rises, the usual response is for people to consume less of that good or service. With regard to probate applications, however, we believe that the risk of people changing their behaviour and making fewer applications is small. This is because there are no alternatives to probate and the requirement to obtain a grant of probate is usually out of the hands of the executor. Therefore the volume of applications should remain fairly constant as they are based on death rates in England and Wales which are broadly similar from year to year.
49. A greater potential risk, though, is that the personal representatives involved, or their representatives, may try and decrease the value of the estate by running down or removing assets. This is a risk both before and after death, but is most likely to materialise afterwards and especially where people die suddenly and no action to undervalue the estate would have been possible prior to this point. Furthermore, as the fees are implemented and the system becomes more embedded, more people may start to arrange their estates with the probate fee in mind.
50. We would therefore expect attempts to decrease the value of an estate to occur after death and to focus on assets which are easy to remove, such as cash and personal possessions, with the aim of moving the estate into a lower probate fee band. HMRC statistics on inheritance tax estimate that approximately 25% of an estate is cash, which would reflect a ‘worst case’ scenario of the potential for individuals to decrease the net value of an estate, although incentive for someone to reduce the value of the estate is greatest for those estates that are valued at just above the lower limit of a fee band.
51. If individuals reduced the value of the estate so it moved into a lower fee band we would expect to see a clustering of estates around the upper limit of fee bands. Data from the Probate Service provided to HMRC does show some evidence of clustering around the current nil rate bands for inheritance tax (i.e. £325,000 for an individual and £650,000 for a married couple or civil partnership). For example, if

we expected estate values to be uniformly distributed between £320,000 and £330,000 we would expect just under three percent of estates to have a value between £324,750 and £325,000. However, just over five percent of estates in the HMRC data showed a value between £324,750 and £325,000, which is some evidence of clustering of estate values at the top end of lower rate bands.

52. The implication of this behavioural change, if widespread, is that the fee proposals would generate lower than expected income for HMCTS. With the data available it is not possible to predict how individuals might alter their behaviour following a change to the fee structure, but we have modelled scenarios to show how expected income for HMCTS might change in response to individuals devaluing the estate. As an illustration, if 10% of estates that are valued at, or just above the lower limit of a fee band, decrease the value the estate so it moves into a lower fee band then there could be a potential loss of income for HMCTS of around £10m a year.

53. These predictions, however, assume that people:

- know the probate fee structure;
- can accurately value the assets;
- will have the inclination to do this at a time when emotional factors will be foremost in their minds; and
- are minded to do this.

54. To account for these behavioural risks explained above, we have factored in a 10% level of optimism bias in our income estimates to reflect a level of uncertainty. In the first year of implementation, a 15% level of optimism bias is also used to account for any additional risks resulting from any pull forward of cases. Evidence from previous fee changes in other courts and tribunals have shown that users are responsive to changes in price, although the exact level of responsiveness is difficult to predict and varies from fee to fee.

#### *Inheritance tax interplay*

55. When examining the impact of any behavioural response to an increase in probate fees, we also need to consider the wider picture. From 2017, the inheritance tax threshold will rise<sup>10</sup> and, by 2020-21, some estates will not have to pay any inheritance tax on the first £1m of an estate.

56. Under the current inheritance tax system, there is a major incentive for estates to be subject to a conservative valuation where the net value is above the tax threshold. The implications are that any incentives individuals currently have to undervalue assets in an estate will decrease as a result of the government's reforms to inheritance tax.

57. We therefore assume that any offsetting impact on income from the proposed probate fees changes will not be substantial. This is because these fees will still only be a small cost in relation to the size of the estate (fees would be set, on average, at under 1% of their value) compared to inheritance tax which is based on a 40% tax rate on any assets valued over the tax free threshold.

58. There may be some incentive, however, to reduce the value of an estate whose net value is just above the new threshold or just above the lower boundary of a higher fee band. In terms of estates worth at around the threshold level, this incentive already exists and should be reduced as a result of the threshold level increasing far more than the proposed lowest fee payable. For estates valued above the threshold, because each fee band is very broad (i.e., because most estates in a fee band will be some distance in value terms from the bottom boundary for the band), we do not believe these incentives will be strong for the vast majority of estates and so we expect any resulting reduction in income to be minimal.

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<sup>10</sup> <https://www.gov.uk/government/publications/inheritance-tax-main-residence-nil-rate-band-and-the-existing-nil-rate-band/inheritance-tax-main-residence-nil-rate-band-and-the-existing-nil-rate-band>

## *Probate volumes*

59. Probate volumes are based on the number of applications made in 2013-14, which have been forecast forward to 2017-18 using death rates in the former year. The data were provided by HMRC and were used in the 2016 Autumn Statement for calculating inheritance tax receipts. Due to changes in the underlying death rate, and any year-on-year fluctuations in the number of deaths, there is a small risk that the number of applications will be slightly higher or lower than what HMRC have estimated and therefore that the income generated may differ to what is outlined in Section E.
60. Conversely, over time, there may be a risk that HMCTS receives more income than predicted as estate values rise faster than what HMRC predict and therefore, more estates would move into the higher fee bands.

## **G. Enforcement and Implementation**

61. All fees are payable in advance of the service being provided. The sanction for non-payment is that the service, where appropriate, will not be provided and the application would not be permitted to proceed. This would continue to apply under the options being considered.

## **H. Monitoring and Evaluation**

62. The MoJ continuously monitors the impact of all fee changes both in terms of the impact on case volumes and in respect of their success in generating the anticipated levels of income.

## **I. One In Three Out**

63. The Regulatory Framework Group has considered these proposals and decided that they do not constitute regulation. This means they are out of scope of the One In Three Out framework.