
The Insolvency Rules 2016

Department for Business, Innovation and Skills (Insolvency Service)

RPC rating: validated

The RPC is now able to validate the estimated impacts of the proposal as a result of the Department's response to the RPC's initial review.

Description of proposal

The proposal will recast the Insolvency Rules to improve the efficiency of the insolvency framework - for example, in relation to electronic communications. The proposal will also consolidate the amendments that have been made to the rules since their introduction. This will simplify and clarify the language used, making the framework easier to implement.

The main elements of the proposed rules will reduce insolvency process costs by:

- making the rules easier to interpret and use;
- amending the timing of progress reports following 'block transfers' between insolvency practitioners. These usually occur when a practitioner retires or leaves a firm, and the current progress report requirements create significant peaks in workloads six months or a year after the transfer;
- removing barriers to e-communications, such as the requirement to obtain a court order to enable documents to be placed online; and
- removing time recording requirements in cases where remuneration is not on a time basis.

Impacts of proposal

The changes to the rules will benefit creditors as a result of a more efficient system, with reduced regulatory burdens and more money being returned to creditors, who are predominantly businesses. The proposal will, however, lead to some one-off costs for insolvency practitioners, as they will need to familiarise themselves with the changes and update materials or business practices.

The estimates in the IA are based on consultation with the industry and, where applicable, reviews of historic case volumes and outcomes. In line with other impact assessments, the Department estimates that 90% of benefits to creditors are

benefits to business; this is based on a review of the outcome of insolvency cases, in terms of realised asset values, across a three year period.

Benefits

Removing barriers to e-communications – this element of the proposal is expected to have two benefits: (1) removing costs in cases where insolvency practitioners currently apply for a court order; and (2) a longer term reduction in postage and printing costs for future cases, as insolvency practitioners make the transition to more standard use of electronic communications. Currently, insolvency practitioners in just over 200 cases each year apply for a court order to allow documents to be placed on line. This is estimated to cost £4,000 in each case. Removing this requirement is expected to result in a benefit to business creditors of £0.8 million each year.

The upfront cost of the court order also acts as a disincentive to businesses that would otherwise use e-communications. The Department's expectation is that the use of e-communications will grow steadily over the appraisal period, from around 5,000 cases in the first year to just over 16,000 in the tenth year. Based on receipts and payments accounts filed at Companies House, the Department estimates that the savings will be around £500 per case. The annual benefit to creditors is expected to be around £2.6 million in the first year, increasing to £8.1 million by the tenth year. As with the other benefits to creditors, 90% of these benefits are expected to accrue to business.

Making the rules easier to interpret – based on discussions with insolvency practitioners, the Department estimates that the simplified rules will save 15 minutes of professionals' time for each case; this is taken as an average time across the 63,000 insolvency cases each year. The Department uses a weighted average of insolvency professionals' charge rates to estimate the average hourly charge as £170. On this basis, the Department estimates the simplified rules will result in an annual benefit to creditors of £2.7 million, of which £2.45 million will be a benefit to business.

Amending timing of progress reports following block transfers – enabling insolvency practitioners to avoid the unnecessary peaks of progress reports, following block transfers, will enable those businesses to avoid the increased cost of hiring short term staff and/or paying extra overtime during peak periods; this is expected to affect between 240 and 360 cases each year, reducing costs in each of those cases by £1,000 to £2,000. Using the mid-point estimates, this element of the proposal is expected to benefit business creditors by around £0.43 million each year.

Removing time recording requirements in cases where remuneration is not on a time basis – insolvency practitioners are currently required to maintain time records, even in voluntary agreement cases where their remuneration is not linked to hours worked. On the basis of consultation evidence, the Department estimates that removing this requirement will result in savings of around £50 per case - in around 21,000 cases each year. This is expected to result in a benefit to business creditors of £0.96 million.

Costs

Familiarisation – the Department expects the changes to result in relatively significant familiarisation costs for insolvency professionals. Based on figures from the Association of Business Recovery Professionals, the Department estimates that there are 1,359 insolvency practitioners, 2,718 insolvency managers, and 7,923 assistants. In order to familiarise themselves with the changes, practitioners and managers are expected to take twelve hours, and assistants six hours.

The IA uses hourly charge rates for the three types of professionals, based on academic research and industry feedback – the figures used are £378 per hour for insolvency practitioners, £253 per hour for insolvency managers, and £106 per hour for assistants; These are the same figures used for the weighted averages for the benefits associated with the simplification of the framework. The use of charge-out rates is discussed in the quality section below.

The cost of familiarisation with the proposals is estimated to be £19.5 million.

Updating documents and templates – the Department expects larger insolvency businesses to have to undertake relatively significant amounts of work to review and adapt existing documents and templates. Based on industry feedback, this is expected to cost around 20 larger insolvency businesses £0.1 million each. Smaller businesses generally rely on documents provided by compliance businesses, prior to adapting those documents to their own needs. As such, the Department estimates that the cost to the 1,000 smaller businesses will be around £0.01 million per business; this is expected to result in a one-off cost to business of £12 million.

Net effect

The RPC is able to validate the estimated equivalent annual net cost to business (EANCB) of -£5.7 million, and can confirm that, for the purposes of the business impact target, the proposal is considered to be a qualifying regulatory provision and will score for the purposes of the target.

Quality of submission

Following the Department's response to the RPC's initial review of the IA, the RPC is able to validate the EANCB. On the basis of the IA as initially submitted, the RPC questioned whether the use of insolvency professionals' charge-out rates was the correct unit cost when assessing the cost of familiarisation with the proposals. It was not clear, for example, whether the hourly pay (uprated for non-wage labour costs) for insolvency professionals would have been a more robust basis for the estimated costs.

The Department's response highlighted that the charge-out rates are based on industry feedback and independent academic research. The setting and use of insolvency fees are regulated activities, with the processes to set the fees and the subsequent activities of IPs subject to regulatory requirements. The Department's response also highlights the interaction between the regulation of insolvency professionals' fees and the nature of their work, such that time spent on familiarisation has a commensurate direct marginal effect on the chargeable hours. The IA, therefore, continues to assess the cost of familiarisation with the proposal using charge-out rates. This would, however, still appear to include an element of over-estimation of the familiarisation costs of the proposal, leading to an understatement of the net benefit to business of the proposal. The Department recognises that this is not ideal from a methodological perspective, and has provided assurances that it will consider how to rectify this issue in a proportionate and robust manner in future cases. Prior to publication, the IA must, however, be amended to include the additional justification provided by the Department for the use of charge-out rates, including an expanded explanation of the marginal effect of chargeable hours and a discussion of the potential scale of the over-estimation of the familiarisation costs.

The IA would benefit from including some scenario testing in relation to the assumed rate of uptake of e-communications. As the level of uptake is subject to considerable uncertainty, providing further information on the potential range of benefits would provide useful additional context for the reader.

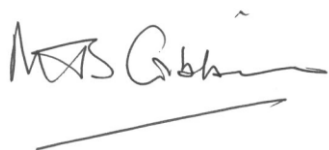
Departmental assessment

Classification	Qualifying regulatory provision (OUT)
Equivalent annual net cost to business (EANCB)	-£5.7 million
Business net present value	£50.8 million

Societal net present value	£60 million
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RPC assessment

Classification	Qualifying regulatory provision (OUT)
EANCB – RPC validated ¹	-£5.7 million
Business Impact Target (BIT) Score ¹	-£28.5 million
Small and micro business assessment	Not required (deregulatory)



Michael Gibbons CBE, Chairman

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