

Title: Aligning the Fees for Grants of Probate to Cost Recovery IA No: MoJ005/2021 RPC Reference No: N/A Lead department or agency: Ministry of Justice Other departments or agencies: HM Courts and Tribunals Service	Impact Assessment (IA)			
	Date: 17/11/2021			
	Stage: Final			
	Source of intervention: Domestic			
	Type of measure: Secondary legislation			
	Contact for enquiries: mojfeespolicy@Justice.gov.uk			
Summary: Intervention and Options				RPC Opinion: Not Applicable

Cost of Preferred (or more likely) Option (in 2019 prices)			
Total Net Present Social Value £m	Business Net Present Value £m	Net cost to business per year £m	Business Impact Target Status Qualifying provision

What is the problem under consideration? Why is government action or intervention necessary?

In England and Wales, 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. At present, HM Courts and Tribunals Service (HMCTS) charges a fee of £155 for an application for a grant of probate from a probate practitioner, and £215 for a personal application on a cost-recovery basis whereas, based on data from 2018/19, the estimated processing costs of administering these applications was £260 and £265 respectively. Taxpayer subsidy is therefore required to cover the shortfall. This impact assessment proposes to set fees to cost-recovery levels and to remove the discrepancy in fees for probate practitioner applications and personal applications.

What are the policy objectives of the action or intervention and the intended effects?

The objectives of the proposal considered in this impact assessment are: to better align with the Managing Public Money principle that the same fee is charged for the same service, now that the cost differential between the two user groups is broadly equivalent; to set the fee at a cost-recovery level; and to protect access to justice by ensuring that courts and tribunals are adequately resourced while reducing the overall taxpayer subsidy to HMCTS.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

The following options were considered:

- Option 0: Do Nothing – Maintain the current fee structure for applications for grant of probate
- Option 1: Increase the fees for applications for grant of probate to £273 for both personal applications and via probate practitioners

Option 1 is the preferred option as it achieves the policy objective of ensuring that applications fees are set at cost-recovery levels. The fee is to be set at £273 as this is weighted average unit cost for 2018/19, uprated by CPI inflation to 2021/22 prices.

Will the policy be reviewed? N/A If applicable, set review date: N/A

Is this measure likely to impact on international trade and investment?		No		
Are any of these organisations in scope?	Micro No	Small Yes	Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded: N/A		Non-traded: 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: _____

Summary: Analysis & Evidence

Policy Option 1

Description: Aligning the Fees for Grants of Probate to Cost Recovery

FULL ECONOMIC ASSESSMENT

Price Base Year 2021/22	PV Base Year 2021/22	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: £0m

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low		1	£19m	N/A
High			£21m	N/A
Best Estimate	£0m		£20m	N/A

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

The best estimate of the additional ongoing cost to court users from paying increased probate fees is estimated to be an average of £20m per annum (annual average in 2021/22 prices). In nominal terms, additional income is expected to be £4m in 2021/22, £22-£25m in 2022/23 and £23-25m p.a. from 2023/24 onwards. As this represents a direct transfer from users of probate services to HMCTS it is not included in the NPV.

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

There may be familiarisation and awareness costs incurred by individuals and legal services providers who use the affected probate services. Any such costs are expected to be minor and so have not been monetised. There will be some transition costs to HMCTS, but these are expected to be low and have therefore not been monetised.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low		1	£19m	N/A
High			£21m	N/A
Best Estimate	£0m		£20m	N/A

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

The additional ongoing benefit to HMCTS from the receipt of increased fees for grant of probate is estimated to be around an average of £20m per annum (annual average in 2021/22 prices). In nominal terms, additional income is expected to be £4m in 2021/22, £22-£25m in 2022/23 and £23-25m p.a. from 2023/24. As this represents a direct transfer from users of probate services to HMCTS it is not included in the NPV.

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

None

Key assumptions/sensitivities/risks	Discount rate (%)	N/A
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The best-estimate modelling assumes that applications for grant of probate will remain at 2019/20 levels throughout the ten-year period. Volumes for the low- and high-income scenarios are reduced and increased by 10,000 applications per year respectively to reflect historical variation in volumes. The remissions rate for probate fees is assumed constant at 2019/20 levels, and the proportion of estates valued at less than £5,000 (and hence not required to pay a fee) is assumed to remain at the level observed in 2018/19 (the latest data available).

BUSINESS ASSESSMENT (Option 1)

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

Evidence Base

A. Background

1. In England and Wales, 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. Fees in civil and family cases are an important source of funding for the courts, and a reasonable means of making resources available to secure access to justice. Under s92 of the Courts Act 2003, the Lord Chancellor has the power to prescribe fees in respect of things done by the courts, which helps to ensure he fulfils his statutory duty to ensure *an efficient and effective courts system*.¹
3. The general legal principle, set out in HMT's Managing Public Money guidance², is that fees should not be set at a level that exceed the cost of the service provided without express Parliamentary approval. The only court fees that may be set at a level that exceeds costs are those set under the enhanced court fee power (section 180 of the Anti-social Behaviour, Crime and Policing Act 2014), and probate fees are not set under this power.
4. The current fees charged for a grant of probate are £215 if an application is made by an individual (around 40% of total applications) and £155 for where it is made by a probate practitioner (60% of all applications)³. These fees were last raised in April 2014. In 2018/19 – the last year for which figures are available – the estimated processing cost of an application made by an individual was £265, while the equivalent cost for a probate professional was £260.
5. In 2016, the Government consulted on broader changes to the probate fee structure, which included fee bands based on estate value. These proposals were ultimately withdrawn in 2019. The options considered in this impact assessment (IA) do not propose introducing probate fees based on estate value.
6. The fee changes considered in this IA will not affect all probate applications as estates worth below £5,000 net do 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.

B. Policy Rationale and Objectives

7. The conventional economic approach to government intervention is based on efficiency or equity arguments. Government may consider intervening if there are strong enough failures in the way markets operate, for example monopolies overcharging debtors, or if there are strong enough failures in existing government interventions, such as outdated regulations generating inefficiencies. In all cases the proposed intervention should avoid generating a further set of disproportionate costs and distortions. Government may also intervene for

¹ S1(1) Courts Act 2003 – "The Lord Chancellor is under a duty to ensure that there is an efficient and effective system to support the carrying on of the business of the Senior Courts, the Court of Protection, the county court, the family court and magistrates' courts, and that appropriate services are provided for those courts." See also s6A Promissory Oaths Act 1868 and s180(3)(a) of the Anti-Social Behaviour Crime and Policing Act 2014.

² 'Managing Public Money', Chapter 6 (Fees, Charges and Levies). July 2013.

³ Proportions based on the volume of applications for the financial year from April 2019 to March 2020

reasons of equity (fairness) and for re-distributional reasons (e.g. reallocating resources from one group in society to another).

8. The primary rationale for intervention in this case is efficiency. Fees charged for a grant of probate are currently recovering below the cost of this service. This means that this service needs to be cross-subsidised by other areas of HMCTS or from general taxation, which diverts that funding from other areas where it could be effectively used. Raising the application fee to cost will ensure cost-recovery, eliminating the need for a cross-subsidy. This is important in the wider context of HMCTS funding: in 2019-20, the cost of running the courts and tribunals service was £2bn, while fee income amounted to £724m.
9. In addition, as there is minimal difference in the cost of processing an application made by a probate practitioner or a personal applicant, it is in the interest of fairness to applicants that these fees are combined into a single fee, set at the level of cost-recovery. Prior to the reform of the service and the introduction of the digital platform, applications from personal applicants took considerably longer to process than those from probate practitioners. Processing times have since converged, with the result that the cost differential between the two is now only around £5, or about 2% of total processing costs.

C. Description of options considered

10. To meet these policy objectives, the following two options are considered in this IA:

- **Option 0: Do Nothing – Maintain the current fee structure for applications for grant of probate**
- **Option 1: Increase the fees for applications for grant of probate to £273 for both personal applications and via probate practitioners**

11. Option 1 is the Government's preferred option as it best meets the policy objectives.

Option 0

12. Under the Do Nothing option the current fee structure would remain in place. In a steady state, we estimate that probate fees would generate around £45m per year. As noted above, however, keeping probate fees at their current levels would mean that the unit cost of processing applications was higher than the income from the related fees and that different fees would continue to be charged despite the processing costs of them being very similar.

Option 1

13. Under this option, the separate fees for personal applications and applications by a probate practitioner will be replaced by a single fee, set to the 2018/19 unit cost (the estimated cost of providing the service) for applications uprated by 4.15% to account for inflation between this point and the proposed date of introduction on 1st February 2022⁴. This would mean a single fee of £273 for all applicants.

14. Estates valued at £5,000 or less will remain exempt from paying a fee on applying for probate. Should they qualify, applicants will also remain eligible to apply for a fee remission through the Help with Fees scheme (which allows applicants to pay reduced or no fees if they have little savings, are on certain benefits, or have a low income).

⁴ The unit cost has been inflated to 2021/22 using the Consumer Price Index.

15. Aligning both fees at £273 will mean that the income generated by applicants' fees will be set at the level of the estimated cost of processing the applications. This will meet the Government's policy objective of cost-recovery, as set out above.

D. Affected Stakeholder Groups, Organisations and Sectors

16. 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 shown below:
- Individuals – those personal representatives who apply for a grant of probate, and those individuals who are beneficiaries of the estate;
 - HMCTS – who operate this 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

17. This IA follows the procedures and criteria set out in the IA Guidance and is consistent with the HM Treasury Green Book.
18. Where possible, IAs identify 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 the proposals under consideration. IAs place a strong focus on the monetisation of costs and benefits. There are often, however, important impacts which cannot sensibly be monetised. These might be impacts on certain groups of society or data privacy impacts, both positive and negative. Impacts in this IA are therefore interpreted broadly, to include both monetisable and non-monetisable costs and benefits, with due weight given to those that are not monetised.
19. The costs and benefits of each option are compared to option 0, the counterfactual or “do nothing” scenario, where fees are maintained at their current levels. As the counterfactual is compared to itself, the costs and benefits are necessarily zero, as is its net present value (NPV).

Methodology

20. The income estimates in this IA have been calculated using 2019/20 volumes and multiplying these by the new fee. All income estimates have been rounded to the nearest £million. The analysis assumes a date of implementation of 1st February 2022.
21. The NPV is calculated over a ten-year period. The fee changes are not included in the overall NPV as they represent a transfer payment from those applying for probate to HMCTS. As such, the NPV mainly reflects the costs to HMCTS of making changes to the existing fee schedules and other operational issues.

Key assumptions

22. The impacts described in this IA are based on modelling and assumptions. These are described below. The risks associated with these assumptions are described in section F.

23. The fee income modelling is based on Family Court Statistics 2019/20⁵. This data is available quarterly, while the modelling uses monthly figures, and therefore we have assumed that one month will have one third of the quarterly data. As volumes include all estates, we need to estimate estates worth less than £5,000 as these pay no fees. The proportion of estates valued at less than £5,000 is calculated from administrative data using the volume for which no fee is paid. We have assumed that the proportion of estates with values of less than £5,000 to be equal to the proportion observed in 2018/19 (the latest available data) – 5% of estates from personal applicants and 2% of estates from probate practitioner applicants - for all years modelled.
24. Court user behaviour may change in response to an increase in court fees. Where this occurs, it is known as the price elasticity of demand. In the case of probate, it is unlikely that demand will change in response to the planned fee changes because an application for grant of probate is a necessary step in the process of transferring the assets of a deceased person to their beneficiaries. The April 2014 fee change produced little to no reduction in applications – there were 267,000 probate applications in the year to March 2014 and 261,000 in the year to March 2015.
25. Existing caseloads should not change substantially in response to the fee changes being considered; however, high and low estimates have been included in the analysis, where we assume a respective increase and decrease of 10,000 cases per year for the ten-year period modelled to account for natural variations in probate applications. The figure of 10,000 was chosen because the average number of applications for the five-year period from 2015 to 2019 is around 274,000, with a low of 261,000 and a high of 286,000. Thus, 10,000 is approximately the difference between the average and the top and bottom of the range. The 2019/20 figures used in the analysis are, at 261,000, at the low end of the of the observed, with the result that the income estimate is conservative.
26. We assume that there will be no impact on probate applications as a result of the Covid-19 pandemic. This assumption is discussed further in the section F, below.
27. We assume that the rate at which the application fee is remitted under the Help with Fees scheme will remain equal to 0.1% throughout the period modelled. This equates to the observed remissions rate in 2019/20. Remission rates refer to the proportion of fee income that is refunded or not charged.
28. We have assumed that a number of applications would be pulled forward into 2021 as personal applicants and probate practitioners react to avoid the new higher fee. This pull-forward is likely to be small as it was at the last fee change in 2014, when volumes rose by around 10% year-on-year in the preceding month. We estimate that 10,000 applications will pull forward in the low scenario and 5,000 in the central scenario, similar to the 2014 fee change. In the high scenario we assume that there is no behavioural impact.
29. The net present value (NPV) of the proposal is calculated over a ten-year period, under the assumption that the fees do not increase in line with inflation at any point subsequent to their being set at £273 on February 1st 2022. Fees are not included in the overall NPV as they represent a transfer payment between the individuals who apply for probate and HMCTS.

Estimated Fee Income

30. Table 1 gives the nominal estimated income from the proposed fee change under the high, best and low-income scenarios described above. As fees do not keep track with inflation the

⁵ Table 24, Family Court Statistics Quarterly: October to December 2020

annual average income will fall over time when measured in 2021/22 prices. Income estimates are rounded to the nearest £million.

31. The impact of implementing the proposed fee change is expected to generate an additional £23m-£25m per annum from 2023/24 onwards (£4m in 2021/22 as the new fees would be introduced towards the end of this period, and £22m-£25m in 2022/23 as it is assumed some applications will be brought forward into 2021/22 in order to avoid the higher fee) depending upon the volume of probate applications.

Table 1: Annual nominal estimated income from proposed change to probate application fee

Net nominal additional income		Year											Average
		21/22	22/23	23/24	24/25	25/26	26/27	27/28	28/29	29/30	30/31	31/32	
Current Income	Low	£43m	£43m	£43m	£43m	£43m	£43m	£43m	£43m	£43m	£43m	£43m	£43m
	Best	£45m	£45m	£45m	£45m	£45m	£45m	£45m	£45m	£45m	£45m	£45m	£45m
	High	£47m	£47m	£47m	£47m	£47m	£47m	£47m	£47m	£47m	£47m	£47m	£47m
		Estimated additional income											
Demand scenario	Low	£4m	£22m	£23m	£23m	£23m	£23m	£23m	£23m	£23m	£23m	£23m	£21m
	Best	£4m	£23m	£24m	£24m	£24m	£24m	£24m	£24m	£24m	£24m	£24m	£22m
	High	£4m	£25m	£25m	£25m	£25m	£25m	£25m	£25m	£25m	£25m	£25m	£23m

32. Table 2 shows the additional income adjusted for expected inflation.

Table 2: Real value of estimated income from proposed change to probate application fee

Net present value additional income		Year											Average
		21/22	22/23	23/24	24/25	25/26	26/27	27/28	28/29	29/30	30/31	31/32	
Current Income	Low	£43m	£43m	£43m	£42m	£41m	£40m	£39m	£38m	£37m	£36m	£36m	£40m
	Best	£45m	£45m	£44m	£43m	£42m	£42m	£41m	£40m	£39m	£38m	£37m	£41m
	High	£47m	£47m	£46m	£45m	£44m	£43m	£42m	£41m	£40m	£39m	£38m	£43m
		Estimated additional income											
Demand scenario	Low	£4m	£22m	£22m	£22m	£22m	£21m	£21m	£20m	£20m	£19m	£19m	£19m
	Best	£4m	£23m	£23m	£23m	£22m	£22m	£21m	£21m	£20m	£20m	£20m	£20m
	High	£4m	£25m	£24m	£24m	£23m	£23m	£22m	£22m	£21m	£21m	£20m	£21m

Costs of option 1

Transitional costs

HMCTS

33. 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. These one-off transitional costs for HMCTS are expected to be low and have therefore not been monetised.

Legal service providers applying for probate

34. There may be familiarisation and awareness costs incurred by legal services providers who apply for probate. These have not been monetised but are not expected to be significant. Individuals applying for probate are assumed not to be aware of the level of probate fees until shortly before they make their application, so a change in the level of fees should have little impact in this regard.

Ongoing costs

Users of probate services

35. Assuming that probate fees are consolidated to a single £273 fee from 26th January 2022, we estimate the additional costs to applicants would be £4m in 2021/22, £22m-£25m in 2022/23 and £23m-£25m after that in nominal prices. This equates to an average £21m-£23m per year in nominal terms for the ten-year period covered by this impact assessment. This represents a transfer from applicants to HMCTS.

Benefits of option 1

Transitional benefits

36. No transitional benefits are expected.

Ongoing benefits

HMCTS & taxpayers

37. As a result of the fee change, we estimate that HMCTS would benefit by £4m in 2021/22, the first two months of the fee change, £22m-£25m in 2022/23, and £23m-£25m per annum after that. This equates to an average of £21m-£23m per year for the 10-year period covered by this IA. This represents a transfer from applicants to HMCTS.

Wider benefits to society

38. Increasing fees for grant of probate to cost recovery levels would reduce the level of public subsidy provided to HMCTS and thus the burden on the taxpayer.

Net impact of Option 1

39. HMCTS is expected to incur some transitional costs from implementing the new fee regime, although these will be low. Probate practitioners who apply for a grant of probate are also expected to incur negligible costs from familiarising themselves with the new fee structure.
40. On an ongoing basis the proposals are expected to generate increased fee income for HMCTS of around £23m-£25m per annum in nominal prices. As the benefit to HMCTS would be offset by the additional cost to users of probate services, the ongoing net impact of the proposal is estimated to be minimal.

F. Risks and Sensitivity Analysis

41. As the impacts described in this IA are based on certain assumptions, there are also some associated risks. Of these risks, uncertainty around application volumes has the largest impact on model outputs: for the high volume scenario, the average annual additional nominal income is £25m from 2023/24 onwards; for the low-volume scenario, the average annual additional nominal income is £23m for the same period.
42. In the event that demand for grant of probate exceeds current estimates, then HMCTS would receive more income than shown in Table 1. In the event demand falls below current estimates, then HMCTS would receive less income than estimated. The analysis in this IA assumes that volumes of applications for grant of probate will be the same as those observed in 2019/20, with a high estimate with 10,000 above this and a low estimate with volumes 10,000 below this. In the five calendar years from 2015 to 2019, application volumes have remained relatively stable: with a high of 286,000 in 2017 to a low of 261,000 in 2016, and have averaged 274,000. Thus the 261,000 for 2019/20 is already at the low end of the variation in volumes.
43. It is possible that the Covid-19 pandemic could have an impact on probate applications, but given the difficulty in forecasting this impact we have used a conservative estimate for application volumes.
44. With regard to probate applications, 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. There is a risk that in the short-term, fluctuations could be outside normal expectations, as discussed in paragraph 42. However, over the ten-year period covered by this impact assessment these fluctuations should balance out.
45. As there is a delay between the date of death and the time of applying for probate, it is possible that some applicants might choose to bring their application forward in order to avoid paying a higher fee. We think it is unlikely that there will be a big surge in applications prior to the fee change, as was seen with the fee changes proposed between 2016 and 2019, as this fee change is relatively modest. As discussed above, we have therefore modelled three scenarios reflecting the surge that was seen prior to the 2014 increase – a low scenario where 10,000 applications ‘pull forward’ and a central scenario where 5,000 ‘pull forward’. If the surge was particularly big this would have an impact on HMCTS processing times and staffing levels, but we consider this risk unlikely given the modest level of the fee change.
46. Other assumptions that could affect income, such as the proportion of estates of less than £5,000 in value and the remission rate are unlikely to change markedly from their current levels and thus will have little impact on incomes. This assumption is reasonable given the low level of estates that are currently below £5,000 in value, a large proportional increase the number of such estates would still be a small absolute increase, and hence have a minor impact on fee income.

G. Wider impacts

Equalities

47. For the equalities impact of the proposal, please see the Equalities Statement that was published alongside this impact assessment.

Better Regulation

48. This measure is not classed as a regulatory provision under the Small Business Enterprise and Employment Act 2015 and so does not score against the department's business impact target.

Potential implications for trade

49. There are no expected implications for international trade arising from the fee changes.

H. Enforcement and Implementation

50. 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.

I. Monitoring and Evaluation

51. The Ministry of Justice 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.