

Title: Review of Insolvency Practitioner Regulation IA No: BEIS041(C)-21-INSS RPC Reference No: N/A Lead department or agency: Insolvency Service (Exec Agency of BEIS)	Impact Assessment (IA)
	Date: 09/11/2021
	Stage: Consultation
	Source of intervention: Domestic
	Type of measure: Primary legislation
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Summary: Intervention and Options	RPC Opinion: Not Applicable

Cost of Preferred (or more likely) Option (in 2019 prices)			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status
-£5.0m	-£5.2m	£1.3m	Non qualifying provision

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

The current structure and model for insolvency regulation, devised in the 1980s, is failing to deliver consistent and robust outcomes and the breadth of regulation required for an effective modern regulatory regime. Nor does it reflect the way insolvency practitioners now do business. This does not align with the Government's commitment to have regulatory systems that are smart, proportionate and meets the needs of business users. A call for evidence in 2019 found evidence of inherent weaknesses with the current Insolvency Practitioner regulatory framework that shows it does not effectively deliver its regulatory objectives. Further indications for the need for change comes from concerns about conflicts of interest for practitioners which was a common area of criticism for peers and MPs during debates on the Corporate Insolvency and Governance Act 2020. The consequences of these issues damage the interests of stakeholders that rely on the framework and therefore lowers confidence in the Insolvency regime. Having a regulatory system that ensures confidence of those involved in insolvency proceedings is crucial to help ensure a level playing field and encourage businesses to continue to operate and invest in the UK, as we emerge from the pandemic and following our departure from the EU.

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

The policy objective is to strengthen the insolvency framework to provide those involved in insolvency proceedings confidence in the regulatory regime. This will be achieved by introducing a new independent Single Regulator, that sits within the Insolvency Service. Consolidating into a Single Regulator will rationalise regulatory activity, improving consistency of outcomes and efficiency in regulatory processes whilst lowering cost and providing economies of scale, ensuring those involved in insolvency proceedings have confidence in the regulatory regime. This will also help to improve the international reputation of the UK's insolvency framework and provide wider economic benefits, such as increased investment and lending for businesses. Taking the steps to achieve the policy objective will also ensure the UK aligns with international best practice principles.

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

Do Nothing: This would not meet the policy objective and would not address the weaknesses identified. The issues identified may further deteriorate leading to the need for more urgent action at a later stage. Therefore concerns, such as those highlighted by parliamentarians and key stakeholders will not be addressed. This option could therefore lead to parliamentary and stakeholder criticism, which would contribute to low levels of confidence in the regulatory regime. In addition, the UK would fail to uphold international best practice principles.

Option 1: Non-regulatory: An alternative would be to try and achieve behaviour change including through increased guidance and some structural changes to the regime that do not need legislation. However, as oversight regulator the Insolvency Service is limited in what it can currently achieve via this approach, particularly those areas that are key to the regime, for example effective enforcement.

Option 2: Transfer regulatory functions to another regulator: Transferring regulatory functions to a new or an existing regulator will not be as effective in meeting the policy objective due to there not being a regulator identified that could prioritise the necessary work to achieve and maintain a robust regulatory regime. This would hinder the Insolvency Service's ability to deliver on its core objectives and creates additional risks to the efficacy of the insolvency regime.

Option 3: Independent single regulator that sits within the Insolvency Service: This option will use primary legislation to create a new statutory office holder of "Regulator" to sit within Insolvency Service to regulate individual insolvency practitioners and firms that provide insolvency services. This is the only option identified that can fully achieve the policy objective.

Will the policy be reviewed? It will not be reviewed. 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 Yes	Small Yes	Medium Yes	Large Yes
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 SELECT SIGNATORY: Date:

Summary: Analysis & Evidence

Policy Option 3

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year 2020	PV Base Year 2021	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -5.5	High: -5.5	Best Estimate: -5.5

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	3	2.6	25.5
High	3	2.6	25.5
Best Estimate	3	2.6	25.5

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

- Familiarisation cost to Insolvency Practitioners - £2.7m
- Familiarisation cost to Insolvency Practitioner firms - £0.1m
- One off redundancy cost to Recognised Professional Bodies (RPBs) - £0.2m
- Ongoing cost to Insolvency Practitioner firms from firm regulation fees - £0.7m
- Ongoing cost to business to comply with firm regulation - £1.1m
- Ongoing indirect cost on business from higher insurance premiums - £0.76m

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

- One off cost to set up the Single Regulator (including IT, recruitment etc.)
- Ongoing cost to the Single Regulator to contract out certain functions

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0.2	2.3	20.0
High	0.2	2.3	20.0
Best Estimate	0.2	2.3	20.0

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

- One off benefit to employees through redundancy transfer - £0.2m
- Ongoing benefit to Insolvency Practitioners from lower fees - £2.3m

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

- Economies of scale – consolidating into a Single Regulator will rationalise regulatory activity, improving efficiency and consistency of regulatory outcomes whilst lowering cost.
- Ongoing benefit to the Single Regulator from Insolvency Practitioner fees to cover procurement costs for functions that will be contracted out.
- Ongoing benefit to the Single Regulator from firm regulation fees
- Improved international reputation and wider economic benefits

Key assumptions/sensitivities/risks

Discount rate (%)

3.5

- The scale and nature of costs and benefits cannot be precisely determined in advance, being dependent on the final demarcation of responsibilities which will only be known at conclusion of the consultation.
- The analysis assumes staff reductions will be commensurate with the loss of fee income (since fee income covers cost of regulation) and be met by a combination of natural wastage, staff transfer/retraining and redundancies.
- The introduction of a Single Regulator will create a transition period between the recognised professional bodies based regulatory regime and the new Single Regulator one which may present a temporary regulatory risk, this could arise over a considerable period of two to four years depending on legislative time.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: 1.5	Benefits: 0	Net: 1.5	
			N/A

Background

1. The regulatory framework for the insolvency profession was established by the Insolvency Act 1986. An Insolvency Practitioner is an individual who is authorised under the Act to act as an office holder in formal insolvency procedures for companies and individuals. As at 1st January 2021, there were 1,570 Insolvency Practitioners in the UK, of which 1,288 were actively taking appointments¹. Insolvency Practitioners work within firms that range in size from the global accountancy and audit firms known as the 'Big Four'², through Small to Medium Enterprises and to sole practitioners. Some Insolvency Practitioners take only personal or corporate insolvency appointments, but many work in both fields. Some practitioners are also authorised to work in accountancy and audit, whilst others focus solely on insolvency. There are also geographical distinctions, with Insolvency Practitioners taking appointments in the UK outside England and Wales, where they are subject to different insolvency rules and legislation.
2. In general terms the regulatory regime for insolvency practitioners can take two forms: state regulation, where the state regulates insolvency practitioners directly, or self-regulation of the profession, such as acting through professional bodies. In practice, countries adopt a dual approach with many forms depending on the degree to which the insolvency profession, through professional bodies or the state; formulate, set and enforce rules.
3. In the UK³ a dual regulatory approach currently underpins the regulation of Insolvency Practitioners, combining both self-regulation by the profession, and independent oversight regulation by the Government. Self-regulation is carried out by four Recognised Professional Bodies (RPBs) whilst oversight regulation is carried out by the Secretary of State via The Insolvency Service. This dual model of regulation combines both the expertise of the profession and the independence of the Insolvency Service, which monitors the RPBs to ensure that they continue to apply the relevant standards. However, weaknesses with the current model have been identified, as explained below.
4. The number of RPBs has reduced in recent years, from eight in 2015 to four currently. Just two RPBs, covering about 90% of all Insolvency Practitioners, regulate most of the profession. These are the Insolvency Practitioners Association (IPA) and the Institute of Chartered Accountants England and Wales (ICAEW). The two smaller RPBs are the Institute of Chartered Accountants Scotland (ICAS) and Chartered Accountants Ireland (CAI), generally covering Scotland and Northern Ireland respectively.
5. A report by the Office of Fair Trading⁴ in 2010 identified that the relatively large number of regulators resulted in a duplication of regulatory efforts. Many insolvency practitioners felt that regulation was inconsistent and that it provided opportunities for regulatory arbitrage. The then Government said that in principle it considered that it was undesirable to have so many regulators for a relatively small profession as it was bound to cause problems of consistency. It stated that the long-term aim was to work with RPBs towards a single regulator model, but at the time the Government stopped short of this and said that it wished to see if there was a way to reform the system without such a significant change.
6. Following the recommendations of two independent reports⁵, the Government instead introduced statutory objectives for insolvency regulators in the Small Business, Enterprise and Employment Act (SBEE) 2015⁶. The aim of the objectives was to provide RPBs with a clearer enhanced structure and to encourage greater consistency amongst the different regulators. The Insolvency Service issued guidance in 2015 to the RPBs to assist them with complying with the statutory objectives. The Insolvency Service also worked with the RPBs to improve consistency by providing guidance on common sanctions for insolvency practitioners.

¹ Insolvency Service monitoring data

² Deloitte, Ernst & Young, KPMG, PriceWaterhouseCoopers

³ Insolvency is a devolved function in Northern Ireland and Scotland, although in practice the regime is closely aligned with that of England and Wales. Oversight regulation in Northern Ireland is carried out by the Department for the Economy (DfE).

⁴ https://webarchive.nationalarchives.gov.uk/ukgwa/20140402160002/http://oft.gov.uk/shared_oft/reports/Insolvency/oft1245

⁵ https://webarchive.nationalarchives.gov.uk/20140402172033/http://oft.gov.uk/shared_oft/reports/Insolvency/oft1245 and <https://www.gov.uk/government/publications/insolvency-practitioner-fees-a-review>

⁶ <https://www.legislation.gov.uk/ukpga/2015/26/contents/enacted>

7. The statutory objectives introduced via SBEE required RPBs to:
 - Have a system of regulating persons acting as insolvency practitioners which delivers fair treatment, adherence to regulatory principles and consistent outcomes.
 - Encourage an independent and competitive Insolvency Practitioner profession whose members act with transparency and with integrity, deliver high quality services at a fair and reasonable cost, and consider the interests of all creditors.
 - Maximise returns to creditors in a timely fashion.
 - Protect and promote the public interest.
8. The legislation also included a power allowing the Secretary of State to create a single, independent regulatory body in place of the current system, should it be considered appropriate. This power expires in October 2022.

Problem under consideration

9. The Government believes that the current structure of the regulatory framework for Insolvency Practitioners with 4 separate regulators is no longer fit for purpose. It leads to inconsistencies in treatment and a lack of an overall strategic approach. Furthermore, the framework does not reflect developments in the insolvency market. The Government believes that this existing structure is leading to weaknesses in the effectiveness of the regime. It is therefore failing to provide confidence not only to those who are involved in insolvency proceedings but also to those who are regulated.
10. A call for evidence was published in July 2019⁷ to help determine whether changes are needed to the current regulatory landscape. The Call for Evidence on the review of insolvency regulation ran from July to October 2019. There were 88 responses from across the insolvency industry, including the RPBs, R3 (the Insolvency Practitioner trade body) creditor organisations, debt charities and individual Insolvency Practitioners.

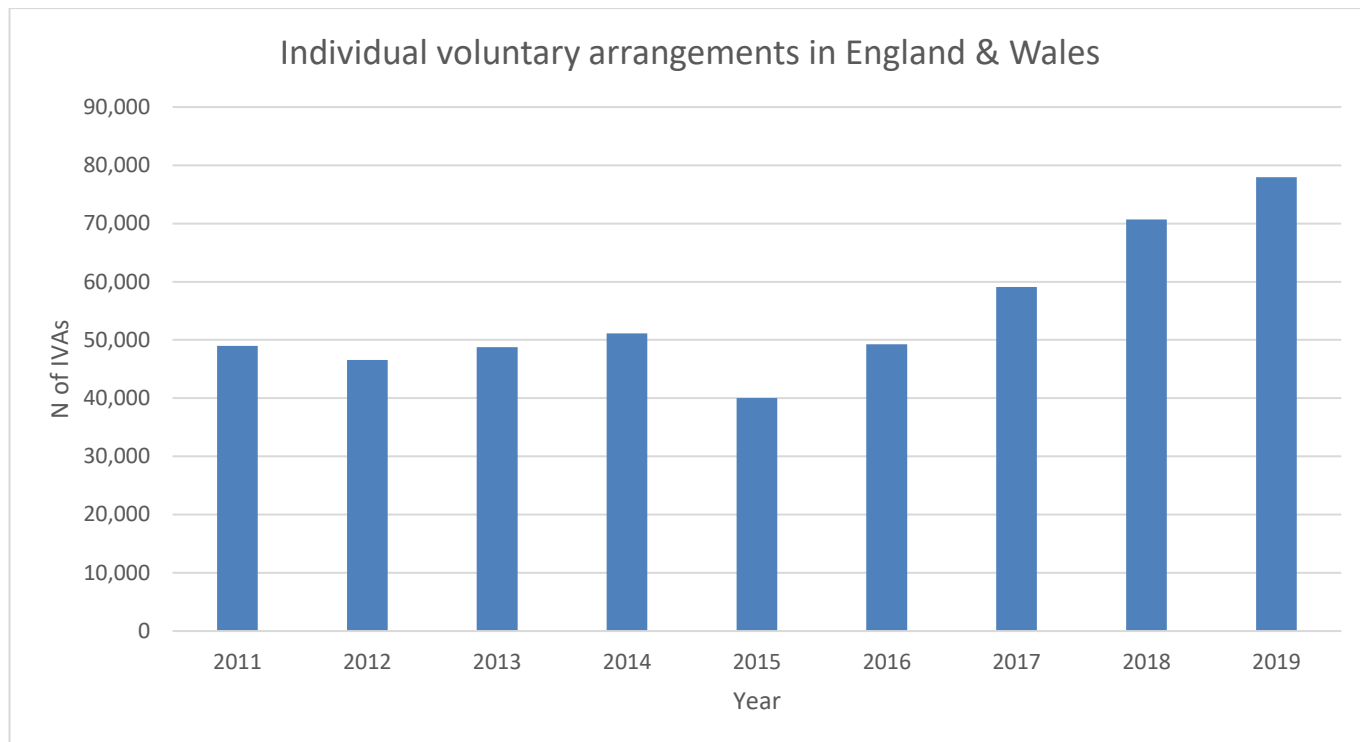
Weaknesses in current regime

11. While the responses to the Call for Evidence and oversight monitoring findings do not suggest there has been a failure of regulation on the part of the existing regulators, certain weaknesses have been identified around efficiency and fairness as outlined below.
 - Concerns around practices in the volume Individual Voluntary Arrangement (IVA) and Protected Trust Deed (PTD) markets. These centred around inadequate or misleading advice being given to individuals wishing to enter an IVA/PTD, consequently leading to mis-selling and subsequent failure of the arrangement. There were also concerns about the fees charged for IVAs and the inability to regulate firms offering IVAs/PTDs.
 - Delays by the RPBs in progressing complaints about insolvency practitioners and a failure to keep complainants updated on progress.
 - Failure by the RPBs to hold insolvency practitioners to account with ineffective disciplinary outcomes and a perception that different RPBs take different approaches to enforcement of the same rules.
 - Concerns about levels of insolvency practitioner fees generally and whether there was sufficient scrutiny of fees by the RPBs.
 - Lack of any mechanism for compensation where there has been wrong-doing or a mistake on the part of the insolvency practitioner, which has adversely affected parties involved in the insolvency proceedings.
 - An overall lack of confidence in the regulatory system and concerns as to whether it could be truly impartial because of the dual roles of the RPBs as membership bodies and regulators.
12. In addition to the weaknesses identified in the call for evidence and oversight monitoring findings, the existing structure of the regulatory framework does not reflect recent developments within the insolvency industry, for example the growth of firms offering personal insolvency solutions, such

⁷https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/816560/Call_for_Evidence_Final_Proofed_Versionrev.pdf

as IVAs and PTDs. Latest Insolvency Service official statistics⁸ (Figure 1) show that that total number of IVAs in England and Wales has been growing in recent years, with cases increasing 58% between 2016 and 2019. The market for IVAs is consolidated in a small number of “volume provider” firms⁹, in 2019 seven firms accounted for around 80% of IVAs registered¹⁰.

Figure 1: Individual voluntary arrangements in England and Wales



13. Concerns about the IVA/PTD market have been raised elsewhere, for example a review of the monitoring and regulation of insolvency practitioners in 2018 found that the way in which IVAs are marketed and provided has changed significantly, with significant concerns about how Insolvency Practitioners at “volume IVA” firms operate and are regulated¹¹. A more recent review was published in 2021 for the Financial Conduct Authority¹² by Christopher Woolard CBE on change and innovation in the unsecured consumer credit market. This highlighted concerns about “the functioning of the IVA and PTD markets, neither of which is regulated directly by the FCA.” In particular that “the often high and front-loaded fees for these solutions were driving poor outcomes and practices for both consumers and creditors.”
14. Furthermore, while the practitioner is required to be authorised and is subject to regulation, the legislative remit of insolvency regulators does not extend to looking at the firm’s practices or the actions of directors, managers or non-Insolvency Practitioner employees. This makes it difficult for regulators to track estate¹³ funds where there are discrepancies, to establish governance structures, and there is no ability to hold the firm to account for its business practices or governance culture that may have led to misconduct. Where there is a regulatory breach by an insolvency practitioner working for, say, a volume provider firm, an RPB can take disciplinary action against the practitioner, to the extent of removing authorisation. This, however, is unlikely

⁸ <https://www.gov.uk/government/statistics/individual-voluntary-arrangements-outcomes-and-providers-2020>

⁹ Volume providers are those firms which typically oversee a large number of IVAs, with employee Insolvency Practitioners as supervisors, and with IVAs representing the majority or sole source of business. The Guidance for Monitoring of Volume Individual Voluntary Arrangements and Protected Trust Deeds defines a “volume provider” as a firm that controls greater than 2% of the total market (including new and existing cases), or 10% for PTDs or greater than 2% of new cases over a three-month period

¹⁰ <https://www.gov.uk/government/statistics/individual-voluntary-arrangements-outcomes-and-providers-2020>

¹¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/775650/Monitoring_and_Regulation_of_IPs_Report.pdf

¹² <https://www.fca.org.uk/news/press-releases/fca-publishes-woolard-review-unsecured-credit-market>

¹³ Assets or property the trustee can deal with to pay creditors

to impact the firm itself, which can simply replace the practitioner and continue with the same poor practices.

15. Further evidence for the need for firm regulation comes from concerns about conflicts of interest for practitioners working for the larger firms, between the Insolvency Practitioners professional requirements and their contract with their employer or due to the relationship between the firm and certain financial institutions. The lack of firm regulation hampers any attempts to address these concerns. This was a common area of criticism for peers and MPs during debates on the Corporate Insolvency and Governance Act 2020¹⁴. Similar concerns have also been raised by the All-Party Parliamentary Group on Fair Business Banking¹⁵, which published its own review of regulation of the insolvency profession.
16. The RPBs offer some level of voluntary firm regulation, which is welcomed and has led to some limited improvements together with other initiatives, such as the IVA protocol. However, it is not a statutory regime and so far, voluntary regulation does not seem to have been effective in tackling the pervading culture of volume IVA providers or the potential conflict of interest for firms operating at the top end of the corporate insolvency sector.

Consequences of weaknesses

17. The issues around IVAs have been articulated by debt advice charities, with the consequences being that financially vulnerable people may be given unsuitable advice and debt solutions that are not suitable for their circumstances¹⁶. Misleading advice can lead people into further financial difficulty and harm. Furthermore, there is a consensus amongst academics and debt advice agencies who have identified associations between financial distress and productivity, relationships, physical and mental health. A Money Advice Service Report¹⁷ found that helping people solve their debt issues resulted in several social benefits:
 - Improved physical/mental wellbeing
 - Mental health
 - Improved productivity
 - Reduced risk of entering further debt cycles
 - Improvements in family relationships
 - Reduced risk of homelessness
18. A lack of confidence in the insolvency regime also has negative consequences for creditors. Concerns were raised around the progress of complaints by RPBs and their failure to hold Insolvency Practitioners to account or have any mechanism for compensation where there has been misconduct that has adversely affected parties involved. In addition, concerns were raised regarding the levels of Insolvency Practitioner fees leading to worse outcomes for creditors. Together, the weaknesses identified, and high levels of fees can lead to higher costs and lower returns for unsecured creditors, which can reduce investment in the business community. It can also cause higher costs to secured creditors resulting in reduced businesses lending, and higher risk premiums being charged. There is also a well-established link between levels of trust and economic growth¹⁸.
19. The consequences of these weaknesses are particularly prevalent in the current economic climate when there is a risk of a rise in insolvencies, both corporate¹⁹²⁰ and personal²¹²², due to

¹⁴ <https://hansard.parliament.uk/Lords/2020-06-09/debates/A98B8D47-41B2-4479-94A2-63B4CBBAE0B2/CorporateInsolvencyAndGovernanceBill>

¹⁵ <https://www.appgbanking.org.uk/statements/statement-from-the-appg-on-fair-business-banking-back-bench-mps-call-for-evidence-in-city-law-firm-review-of-insolvency-industry/>

¹⁶ <https://www.yourmoney.com/credit-cards-loans/debt-advice-charities-raise-concerns-about-bad-practice-by-iva-providers/>

¹⁷ The Impact of Independent Debt Advice Services on the UK Credit Industry, Jackie Wells with John Leston and Mary Gostelow, Friends [http://www.infohub.moneyadvicetrust.org/content_files/files/jackie_wells___debt_advice___full_report1.pdf]

¹⁸ <https://www2.deloitte.com/uk/en/insights/economy/connecting-trust-and-economic-growth.html>

¹⁹ https://www.eulerhermes.com/en_global/news-insights/economic-insights/2021-22-vaccine-economics.html

²⁰ <https://obr.uk/efo/economic-and-fiscal-outlook-march-2021/>

²¹ <https://www.stepchange.org/policy-and-research/debt-research/covid-debt-2020.aspx>

²² [https://www.citizensadvice.org.uk/Global/CitizensAdvice/Debt%20and%20Money%20Publications/Excess%20Debts_who%20has%20fallen%20behind%20on%20their%20household%20bills%20due%20to%20coronavirus%20plus%20methodology\).pdf](https://www.citizensadvice.org.uk/Global/CitizensAdvice/Debt%20and%20Money%20Publications/Excess%20Debts_who%20has%20fallen%20behind%20on%20their%20household%20bills%20due%20to%20coronavirus%20plus%20methodology).pdf)

the impact of the Covid-19 pandemic. This means there is likely to be a higher level of insolvency activity, meaning the consequences of any weaknesses will be accentuated.

20. In the wider context, it is important to recognise that the UK is recognised as being a world class place in which to do business, invest and innovate. The World Bank's Doing Business rankings illustrated this, and "Resolving Insolvency" was one of the measures that contributed to the UK's overall position in the rankings. In the final report²³ the UK was ranked 14th in the world for "Resolving Insolvency". Following its exit from the EU, the UK is developing new international trading relationships. Businesses and investors need to have confidence to make the most of the opportunities available. A regulatory framework that gives those involved in insolvency proceedings and regulation confidence is essential for attracting investment. Changes in EU legislation mean that EU member states are developing and improving their frameworks²⁴. In order to maintain confidence, it is important that the UK regime does not stand still and addresses any weaknesses identified in its regulatory framework. Having, and being seen to have, a regulatory system that ensures confidence of those involved in insolvency proceedings is important to encourage businesses to continue to operate and invest in the UK.
21. The UK should also look to align with best practice principles. The UK is a founding member of the International Association of Insolvency Regulators (IAIR)²⁵ which aims to help promote international co-operation on insolvency regulation and the development of best practice. The IAIR, following consultations with members and considering international best practice, published principles²⁶ for the regulation of insolvency practitioners. The principles recognise that there is no right way to regulate the sector, and that each market will need to consider its own relevant factors, but there are a range of valid regulatory approaches and each regime must respond to their unique set of circumstances.
22. The principles provide guidance on the regulatory regime as a whole and the regulatory bodies that regulate the sector:
 - I. The regime should advance fundamental regulatory objectives such as protecting the rights and interests of those involved in the insolvency process and maintaining public confidence
 - II. The regulatory regime should identify the bodies and their responsibilities
 - III. Regulatory arbitrage should be precluded
 - IV. There should be due accountability of regulatory bodies and they should fulfil their responsibilities ensuring fairness
 - V. Collection and dissemination of data about the performance of regulatory bodies to help ensure public confidence
23. One of the consequences of the weaknesses identified with the current regulatory framework, is that the UK does not currently align with best practice principles set out by IAIR. For example, some individuals who are being directed into an IVA are not having their interests protected. Issues around fairness have been raised as well as an overall lack of confidence in the regulatory framework. Therefore, the proposals will help ensure alignment with international best practice. Whilst the principles state only natural persons should be eligible to seek authorisation, they also acknowledge that each market will need to consider its own relevant factors. This means the need for firm regulation is warranted because of the evidence above and aligns with the best practice principals set out by IAIR.
24. Based on the weaknesses and consequences identified, the Government believes that there is a need to strengthen regulation, not just for misconduct arising from the actions of Insolvency Practitioners but also the operations of firms that employ them.

²³ <https://www.doingbusiness.org/en/data/exploreeconomies/united-kingdom>

²⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1023&from=EN>

²⁵ <https://www.insolvencyreg.org/about-us/who-are-iair>

²⁶ <https://www.insolvencyreg.org/sites/iair/files/uploads/IAIR%20Principles%20-%20version%201.2%20for%20uploading%20to%20web.pdf>

Rationale for intervention

Insolvency Practitioners and RPBs

25. The rationale for regulating Insolvency Practitioners derives from the economic concept of market failure. In particular:
- I. The actions and decisions of Insolvency Practitioners during the insolvency process can generate '**externalities**'²⁷. These are impacts on other stakeholders who are not party to the decisions. The actions of an Insolvency Practitioner can have adverse costs for certain creditors, employees, and other stakeholders who are not party to the decision to appoint the Insolvency Practitioner to that case. Such stakeholders are unable through their choice of practitioner to force these costs to be internalised, that is, to fall only on those who have participated in the decision to appoint²⁸. Furthermore, corporate insolvency has a wide impact and can have consequences beyond the parties directly involved, often the loss of a vital business relationship can lead to knock-on effects on other firms – the “domino effect” in action. R3²⁹ has estimated 1 in 4 UK companies were hit by this “domino effect” in the last 6 months of 2017³⁰. Therefore, the actions of Insolvency Practitioners through the insolvency process can impact third parties.
 - II. During the insolvency process the Insolvency Practitioner obtains information relating to the debtor, creditor and other counterparties, which creates '**asymmetric information**'³¹ (whereby one party has more or better information than the other when making decisions).
 - III. The relationship between RPBs and the Insolvency Service creates a **principle-agent problem**³². This applies in this instance as the interests of the RPBs (the agent) do not match those of the principle (Secretary of State via The Insolvency Service). For example, RPBs will have a dilemma in needing to discipline certain Insolvency Practitioners, but also have an interest in maintaining their membership, which could suffer if they are seen to be more disciplinarian than other RPBs. A lack of robust enforcement means Insolvency Practitioners have the opportunity to engage in non-compliant behaviour, something they may be incentivised to pursue due to possible economic gain. This creates a market failure and regulatory arbitrage could emerge if an RPB chooses to enforce the rules differently to others. To rectify this problem, it is proposed that Government should intervene.

Regulation of firms

26. There is public and stakeholder support to introduce firm regulation. Responses to the Call for Evidence³³, from the credit unions, debt advice sectors and some RPBs, suggested that firms should be regulated alongside the individual Insolvency Practitioners. Where concerns around firm regulation were raised, this was due to the potential costs for small businesses and that firm regulation should not replace individual licensing of Insolvency Practitioners. Therefore, firm regulation (which does not place disproportionate costs on small businesses) will enable the regulator to close the regulatory loophole and act where there has been wrongdoing by a firm or one of its employees, if it is shown that the wrongdoing is a result of the governance or internal procedures of the firm. The Government is therefore consulting on a proposed model for the regulation of firms, to run alongside the regulation of Insolvency Practitioners.

²⁷ In economics, an externality is a cost or benefit that is imposed on a third party who is not involved and has no control over the generation of the costs or benefits. An example of a negative externality is pollution where the external costs are passed on to society and not just the polluter.

²⁸ <https://www.insolvencyreg.org/sites/iair/files/uploads/IAIR%20Principles%20-%20version%201.2%20for%20uploading%20to%20web.pdf>

²⁹ The Association of Business Recovery Professionals (trade body for insolvency practitioners), <https://www.r3.org.uk>

³⁰ [https://www.r3.org.uk/press-policy-and-research/news/more/29093/store/459207/page/3//R3 Business Distress Index, Wave 25](https://www.r3.org.uk/press-policy-and-research/news/more/29093/store/459207/page/3//R3%20Business%20Distress%20Index,%20Wave%2025) - <https://www.r3.org.uk/press-policy-and-research/policy-research/r3-research-into-business-distress-issues/>

³¹ <https://courses.lumenlearning.com/boundless-economics/chapter/sources-of-inefficiency/>

³² <https://courses.lumenlearning.com/boundless-economics/chapter/sources-of-inefficiency/>

³³ [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/816560/Call for Evidence Final Proofed Versionrev.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/816560/Call_for_Evidence_Final_Proofed_Versionrev.pdf)

27. Currently, where there is a regulatory breach by an Insolvency Practitioner working for a firm an RPB can take disciplinary action against the practitioner. However, this will not impact the firm itself, which can simply replace the practitioner and continue with the same poor practices.
28. The status quo creates a **moral hazard**³⁴ problem generated by a lack of accountability for firms. That is, firms are more likely to engage in poor practices or take more risks if they do not bear the consequences of their actions. Consequently, the lack of firm regulation means there is currently a regulatory loophole, a source of regulatory failure.
29. The Insolvency Service has noted weaknesses and negative consequences in the current regime, which reflect many of the concerns raised in response to the Call for Evidence. The lack of firm regulation is a significant gap and reform is necessary to protect both consumers and creditors. The Insolvency Service believes that the current structure of 4 different RPBs and an oversight regulator is no longer fit for purpose and contributes to the weaknesses within the existing system. It proposes to consult on the introduction of a single regulator. The Government believes this will help to ensure consistency and a uniform approach and will address some inherent weaknesses.
30. If the Government does intervene then the main affected parties will be Insolvency Practitioners, the RPBs, insolvency firms and the Insolvency Service. Impacts of a more robust regulatory system will also be felt by creditors and debtors.

Policy objective

31. The policy objective is to strengthen the insolvency framework to provide those involved in insolvency proceedings confidence in the regulatory regime. This will ensure the regime reflects the needs of 21st century users. This objective will be achieved via several secondary objectives below. These will be measured through a process evaluation (see Monitoring and Evaluation section below); however, the specific measurables will not be determined until the monitoring and evaluation plan is finalised, though potential measurables are included beneath each secondary objective below:
 - I. To enable independent regulation of the IP profession
 - a. This can be measured through primary data collection of opinions from stakeholders using the OECD definition of an independent regulator³⁵; 'This means that they must behave and act objectively, impartially, and consistently, without conflict of interest, bias or undue influence - in other words, independently'.
 - II. Provide a user-friendly system to submit complaints against Insolvency Practitioners and an efficient framework to address them
 - a. To measure this the Insolvency Service is aware that a suitable monitoring system will need to be designed and built. The Insolvency Service has experience having launched Breathing Space³⁶. This can then be measured using Insolvency Service Management Information from the system and ongoing work with our customer insight team, who regularly run user researcher sessions, and potentially using primary data collection from complainants. Again, this can only be confirmed during the monitoring and evaluation plan.
 - III. Provide a framework for monitoring and investigation that will deliver transparent, consistent and effective enforcement outcomes against Insolvency Practitioners. This will be mostly based on the monitoring system and covers three areas.
 - a. Transparency -This can be measured through outcomes in Insolvency Service official statistics or other publication (such as the annual review of IP regulation which shows outcomes from current monitoring visits).

³⁴ In economic theory, a moral hazard is a situation where a party will have a tendency to take risks because the costs that could incur will not be felt by the party taking the risk.

³⁵ <https://www.oecd.org/fr/publications/being-an-independent-regulator-9789264255401-en.htm>

³⁶ <https://www.gov.uk/government/news/breathing-space-to-help-millions-in-debt>

- b. Consistency – this can be measured by comparing if similar cases achieve the same outcome, this can be completed using management information.
 - c. Effectiveness can be measured in terms of outcomes (again using management information), as well as using primary data collection from stakeholders on confidence in the regime.
- IV. To address apparent conflicts both between the role of an Insolvency Practitioner and the business model of firms offering insolvency services, as well as between practitioners and the membership model of RPBs that regulate them.
- a. This can also be measured through primary data collection of opinions of stakeholders, with a particular focus on the introduction of firm regulation. Complaints management information can also be used.

32. A logic model for the policy can be seen in Figure 2:

Figure 2: Logic model

Context	Inputs	Outputs	Outcomes	Impacts
<p>A call for evidence was published in July 2019 which noted several problems with the current regulatory framework</p> <p>Overall, the responses to the call for evidence indicated a lack of confidence in the current RPBs to hold Insolvency Practitioners properly to account and that problems have been identified around both efficiency and fairness</p>	<p>Introduce a new independent Single Regulator with responsibility for regulation of firms as well as individual Insolvency Practitioners, that sits within the Insolvency Service, via primary legislation</p>	<p>Independent statutory regulation of the Insolvency Practitioner profession</p> <p>A user-friendly system to submit complaints against Insolvency Practitioners/firms and an efficient framework to address them</p> <p>A framework for monitoring and investigation that will deliver transparent, consistent and effective enforcement outcomes against Insolvency Practitioners</p> <p>Address apparent conflicts both between the role of an Insolvency Practitioner and the business model of firms offering insolvency services, as well as between practitioners and the membership model of RPBs that regulate them</p>	<p>Those involved in insolvency proceedings have confidence in the regulatory regime.</p> <p>Consolidating into a Single Regulator will rationalise regulatory activity, improving efficiency whilst lowering cost, providing economies of scale and higher standards.</p>	<p>If those involved in insolvency proceeding have confidence in the regulatory regime it will improve the international reputation of the UK's insolvency framework and provide wider economic benefits.</p> <p>The UK will align with international best practice principles.</p>

33. The policy will be implemented through a transition period which could be between two to four years. The policy will be deemed a success if the anticipated outputs and outcomes in the logic model are achieved.

Description of options considered

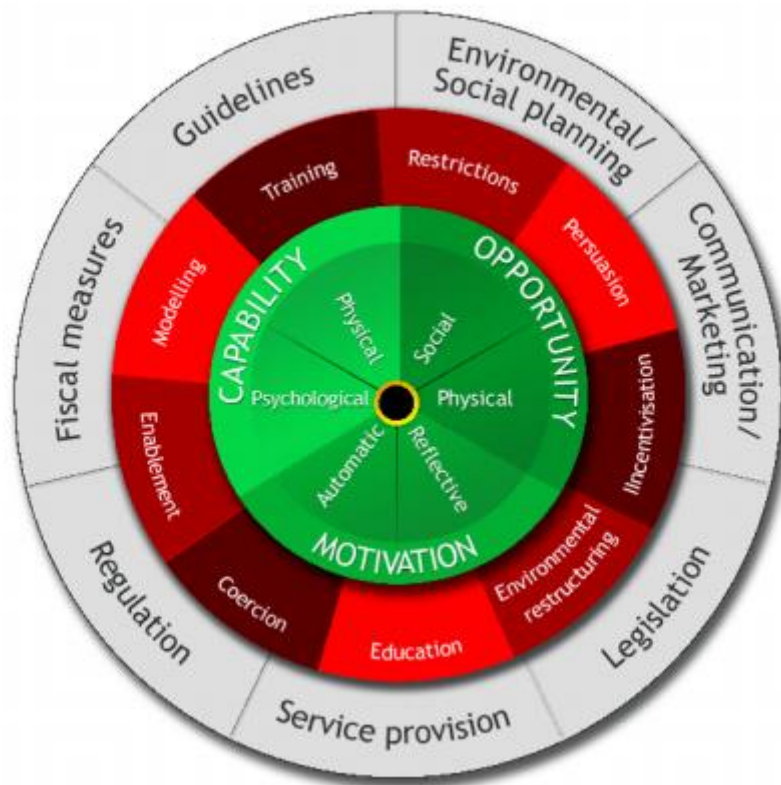
Do nothing

34. This would not address the weaknesses identified and the consequences of these weaknesses will continue and most likely increase in severity, thereby damaging the regulatory system's efficacy and its stakeholders. Therefore concerns, that have been highlighted, will not be addressed. This option could therefore lead to parliamentary and stakeholder criticism, which would contribute to low levels of confidence in the regulatory regime. In addition, the UK would fail to uphold international best practice principles.
35. This will not meet the policy objective to give those involved in insolvency proceedings confidence in the regulatory regime.

Option 1: non-regulatory option

36. In the absence of regulation, an alternative would be to try and achieve behaviour change³⁷ using a framework such as the behaviour change wheel³⁸ as shown in Figure 3.

Figure 3: The behaviour change wheel



37. Using this framework, the failings of the regulatory framework identified could be tackled using interventions such as education and restrictions. Education can be used to increase knowledge

³⁷ <https://www.gov.uk/government/publications/behaviour-change-guide-for-local-government-and-partners>

³⁸ Michie, S., Van Stralen, M. M., & West, R. (2011). The behaviour change wheel: a new method for characterising and designing behaviour change interventions. *Implementation science*, 6(1), 1-12.

through the sharing of guidance and best practice. While restrictions can be used to create rules to prevent the engagement in undesired behaviour.

38. The Insolvency Service, as oversight regulator, already uses education and restrictions by working closely with the sector to improve insolvency standards and harmonise approaches across the sector. The Insolvency Service and RPBs have several tools to achieve this:
- I. Joint Insolvency Committee (JIC) – The JIC works to maintain and improve insolvency standards whilst promoting consistency across the profession. Composed of RPBs and the Insolvency Service it is responsible for the Code of Ethics applicable to insolvency practitioners, Statements of Insolvency Practice³⁹ and Insolvency Guidance Papers.
 - II. Statement of Insolvency Practice (SIPs) - SIPs - are issued to insolvency practitioners under procedures agreed between the Insolvency Service and RPBs. Through the JIC they maintain standards by setting out required practice and harmonising practitioners' approach to particular aspects of insolvency. They outline best practice, principles, procedures and standards which insolvency practitioners must abide by or otherwise face potential disciplinary or regulatory actions.
 - III. Dear IP letters – These are letters from the Insolvency Service as oversight regulator to Insolvency Practitioners sharing guidance and requirements they must follow.
 - IV. Guidance – The Insolvency Service provides guidance and advice on a range of topics including how RPBs should regulate Insolvency Practitioners.
 - V. Regulatory measures – As part of its oversight regulation the Insolvency Service performs regulatory activity such as monitoring visits and reporting, with the power to reprimand or use sanctioning powers where necessary.
39. However, the Call for Evidence indicated stakeholders were concerned about a lack of transparency, independence and confidence in the regulatory system with ineffective disciplinary outcomes, suggesting this approach is not currently having the desired effect. Whilst the Secretary of State has powers to sanction RPBs, as oversight regulator the Insolvency Service is limited in what it can currently achieve via this approach as it cannot currently enforce disciplinary actions directly upon Insolvency Practitioners (without going through court) and relies on RPBs to ensure compliance. The limited threat of effective enforcement via this approach would not meet the policy objective and could even undermine confidence from those involved in insolvency proceedings in the regulatory regime.
40. Therefore, this approach is not suitable to meet the policy objective and will not enable the UK to uphold international best practice principles.

Option 2: Regulatory Option – transfer regulatory functions to another regulator

41. Alternatively, the power in SBEE could be used to create a single regulator and transfer regulatory functions entirely to another regulator. Possible regulators are:
- I. An existing RPB
 - II. The Financial Conduct Authority (FCA)
 - III. Audit, Reporting and Governance Authority (ARGA), a proposed new regulator that will replace the Financial Reporting Council⁴⁰
42. The first option of an existing RPB would not meet the policy objective as regulation under a single RPB would continue the Insolvency Services reliance on RPBs to ensure compliance limiting what it can achieve and therefore will not address the concerns that have been identified.
43. The remaining options could achieve independent regulation and offer some advantages since the Single Regulator would be part of a larger regulatory body, if under the FCA or the proposed new regulator ARGA, enabling closer cross-regulator collaboration. There were suggestions in the responses to the call for evidence that regulation of IVAs/PTDs should be transferred to the FCA.

³⁹ Statements of Insolvency Practice are issued to licensed insolvency practitioners, and aim to maintain high standards in insolvency work

⁴⁰ <https://www.gov.uk/government/news/audit-regime-in-the-uk-to-be-transformed-with-new-regulator>

44. Neither the proposed model for ARGAs, (and the FRC in its current form) nor the FCA cover insolvency, focusing instead on audit and financial regulation respectively. The proposed focus of ARGAs will be public entity bodies, which is different compared to the market structure in insolvency, where the majority are smaller firms with a few practising Insolvency Practitioners, so this would not be a suitable match. Similarly, the FCA, although not exclusively, which is less akin to Insolvency Practitioner regulation. This will mean that the new Single Regulator risks being “siloes” and may limit engagement with the Insolvency Service and other stakeholders, compared to other approaches. This limits the ability to act effectively, to the detriment of the public good. Insolvency Practitioner Regulation is a vital part of the Insolvency Service’s remit and a separation would hinder the agency’s ability to deliver economic confidence⁴¹. The Insolvency Service has responsibility for developing policy on insolvency legislation and it would separate policy and practice from regulation if the responsibility for the regulatory framework were to be transferred to another regulator. This could lead to disconnection and a lack of co-ordination⁴² which will be accentuated by any staff lost, this may impact the effectiveness of the organisation and longer term, a new regulator could face recruitment issues.
45. Furthermore, ARGAs is currently being formed itself, to address weaknesses in audit regulation⁴³. Adding insolvency into the mix at the current time would be highly disruptive and would limit the potential for weaknesses in either audit or insolvency regulation being adequately addressed.
46. Therefore, transferring regulatory functions to another regulator will not be as effective in meeting the policy objective, undermines the Insolvency Service’s core objective and creates additional risks to the efficacy of the insolvency regime.

Option 3: Regulatory Option – Independent Single Regulator within the Insolvency Service

47. The power in SBEE does not allow for the Insolvency Service to be a future Single Regulator. Therefore, a third option is to introduce new measures via primary legislation to create a new independent statutory office holder of “Regulator” to sit within Insolvency Service. This is the only option that will fully achieve the policy objective as laid out in Figure 2, so that those involved in insolvency proceedings have confidence in the regulatory regime. It will also enable the UK to align with international best practice.
48. The Single Regulator⁴⁴ would have powers to authorise, regulate and discipline insolvency practitioners and to set professional and educational standards. Furthermore, the Single Regulator would be able to “contract out” certain functions to other bodies.
49. The intention would be that the Single Regulator would have the powers to carry out following functions:
- To set the requirements for acting as an Insolvency Practitioner
 - To authorise individuals (either fully or partially) to act as Insolvency Practitioners
 - To regulate and monitor the activities of Insolvency Practitioners
 - To investigate of complaints against Insolvency Practitioners
 - To discipline and impose sanctions in respect of Insolvency Practitioners
 - To set technical, educational, professional and ethical educational standards for Insolvency Practitioners
 - To create and manage a public register of authorised Insolvency Practitioners
 - To share and receive intelligence
 - To require the production of information
 - To levy a fee to cover the cost of regulation

⁴¹ <https://www.gov.uk/government/publications/the-insolvency-service-annual-plan-2020-to-2021/the-insolvency-service-annual-plan-2020-to-2021#delivering-economic-confidence>

⁴² <https://www.bbc.co.uk/news/business-35821782>

⁴³ <https://www.accountancydaily.co/more-powers-audit-regulator-arga-plans-take-shape>

⁴⁴ The regulator would be acting on behalf of the Secretary of State

- To delegate certain functions to other specified bodies and to make payment for the cost of undertaking those functions
50. The Single Regulator would also have the following functions in respect of firms offering insolvency services, should firm regulation be introduced:
- To set the requirements for registration of firms offering insolvency services
 - To regulate and monitor the activities of firms offering insolvency services
 - To investigate complaints against firms offering insolvency services
 - To discipline and impose sanctions in respect of firms offering insolvency services
 - To set professional and ethical standards for firms offering insolvency services
 - To create and manage a public register of authorised firms offering insolvency services
 - To share and receive intelligence
 - To require the production of information
 - To levy a fee to cover the cost of regulation
 - To delegate certain functions to other specified bodies and to make payment for the cost of undertaking those functions
51. In practice, the Government envisages that the Single Regulator would carry out certain functions directly, but that other functions could be contracted out to specified bodies, which had suitable experience and expertise. The accompanying consultation seeks views on the relationship between the Single Regulator and these bodies; and views on which functions should be carried out directly by the Single Regulator and which might be contracted out to specified bodies. It is expected that the following functions would be contracted out for Insolvency Practitioner regulation:
- Consideration of applications and authorisation of insolvency practitioners in accordance with standards and requirements set by the Single Regulator
 - Provision of education and training for the insolvency profession
 - Routine monitoring - regular monitoring of insolvency practitioners to ensure compliance with statutory and regulatory requirements and provision of a report to the regulator on the outcome of monitoring
52. It is expected that the following functions would be contracted out to specified bodies in respect of firms offering insolvency services:
- Consideration of applications and registration/authorisation of firms offering insolvency services in accordance with standards and requirements set by the Single Regulator
 - The routine monitoring of firms offering insolvency services and provision of a report to the regulator on the outcome of monitoring
 - Provision of education and training for the insolvency profession
53. It is envisaged that close ties will remain with the sector and with stakeholders on professional and educational standards, but the ultimate decision would rest with the Single Regulator. There would be an internal review process for considering any appeals against complaints or disciplinary or enforcement proceedings. If the matter was still not resolved the route of appeal would be to the Court.
54. Currently RPBs do not routinely operate a scheme of compensation by Insolvency Practitioners where that has been an error or wrongdoing. In practice, where a practitioner has made a mistake or error, they may voluntarily return funds to an estate, where the mistake has resulted in financial loss. A Complaints Themed Review undertaken by the Insolvency Service's Regulation Team acting as oversight regulator, found that payment of compensation by Insolvency Practitioners to complainants to resolve their complaint was inconsistent and RPBs had different approaches to whether or not compensation could be paid in appropriate cases. To address the inconsistency across the RPBs, and to increase transparency and confidence in the complaints process, the Themed Review recommended that RPBs should enter into discussions with the

Insolvency Service about how a formal mechanism for compensation by Insolvency Practitioners could be incorporated into the current regulatory framework. But there has been little progress since then with some RPBs arguing that it would be difficult to change their rules in respect of Insolvency Practitioners as it would impact on their accountancy members.

55. Under the Government's proposal for a Single Regulator, the Single Regulator would have a range of disciplinary sanctions to reprimand, fine, direct or to withdraw individual authorisation or firm registration. These sanctions could include the ability to require compensation in certain circumstances. The Single Regulator would be able to direct that compensation to customers where the actions of the Insolvency Practitioner or firm providing insolvency services have caused any inconvenience, loss, or distress.
56. The Insolvency Service currently operates a compensation system where there has been a service failure on the part of an Official Receiver. It believes a similar system could be put in place in respect of Insolvency Practitioners/firms. Under the Insolvency Service scheme, the amount of compensation payable for undue distress or worry is capped at £250. While the Government believes that it is right a financial loss or other damage incurred as a result of a mistake or failure on the part of an Insolvency Practitioner should be made good, it considers that a compensation mechanism in respect of insolvency practitioners/firms could be more difficult to introduce into the regulatory framework to ensure fairness across the board. The accompanying consultation therefore seeks views on whether there should be a maximum limit on the amount of compensation that could be awarded under the proposed compensation mechanism. (For example, the financial ombudsman scheme imposes a maximum award of £355,000 for complaints involving a financial loss). Anyone seeking a higher amount than the maximum limit set under the insolvency compensation mechanism would need to pursue a claim through the courts. Any impacts on business from the fines would not fall under the Better Regulation Framework because of the fines and penalties exclusion⁴⁵.
57. There is public and stakeholder support to introduce **firm regulation**. Responses to the Call for Evidence⁴⁶, from the credit unions, debt advice sectors and some RPBs, suggested that firms should be regulated alongside the individual Insolvency Practitioners. Where concerns around firm regulation were raised, this was due to the potential costs for small businesses and that firm regulation should not replace individual licensing of Insolvency Practitioners. Therefore, the Single Regulator would also introduce firm regulation, by introducing legislation to require all firms offering insolvency services to register.
58. The Register will be a public record of all individuals and firms that offer insolvency services. The Register will provide transparency for all users of insolvency services, who will be able to access the register to check whether the firm they are dealing with is a regulated firm, subject to the standards set by the Single Regulator. As well as allowing users of insolvency services to check that those offering such services are regulated, the Register will also be a means to check whether an individual or firm has been sanctioned or had other action taken against them by the Single Regulator.
59. The Single Regulator would have information gathering powers, as well as powers to discipline and sanction firms and to remove them from the register if necessary. Firms would be required to comply with firm regulation and meet regulatory standards to ensure there are no conflicts of interest between aims/policies of firm and duties/responsibilities of Insolvency Practitioners. Where the firm failed to do so, the firm would be subject to disciplinary action, e.g. reprimand, fine, imposition of conditions, or removal from register. Whilst all firms offering insolvency services will need to register, care needs to be taken to avoid an unnecessary regulatory burden on small businesses. We will work with stakeholders and industry to develop the policy and a model for firm regulation, which is appropriate to the sector.
60. The Government is proposing that some qualifying firms (which pose the most risk) will also be required to meet a set of additional specified criteria for registration and a regime of enhanced monitoring. Such criteria may include the appointment of a Senior Responsible Person, the firm's suitability to conduct business including an appropriate business model, controls and governance to ensure that there are no conflicts of interest between the aims and policies of the firm and the

⁴⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/916918/better-regulation-guidance.pdf

⁴⁶ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/816560/Call_for_Evidence_Final_Proofed_Versionrev.pdf

duties and responsibilities of the Insolvency Practitioners they employ. The Government will work with the profession to consider a suitable set of qualifying criteria for firms which must also be subject to the Additional Requirements Regime for registration.

61. By introducing a new independent Single Regulator that sits within the Insolvency Service, the outputs and outcomes identified in Figure 2 can be achieved, thereby achieving the policy objective.
62. The Government believes that it is important that the new Single Regulator should have clear, high level objectives to set direction and provide an overall framework for the regulatory regime. As it is, the current objectives (set up under SBEE) were drawn up in respect of a different regulatory framework and the Government believes changes are needed to take account of the proposed new regulatory model, which includes regulation of firms offering insolvency services. It is proposed that the new statutory objectives are to have a system of regulating that:
 - I. Secures fair treatment for those impacted by insolvency and acts impartially and transparently with regard to those regulated
 - II. Encourages a and innovative industry, that acts with integrity, promotes the maximisation and promptness of returns to creditors, protects the public interest and offers high quality services at a fair and reasonable cost
 - III. Supports those regulated in complying with their responsibilities and ensures consistent and effective outcomes

Costs and benefits

63. The measure to create a Single Regulator falls outside of the Better Regulation Framework⁴⁷, as it excludes businesses “acting on behalf of a public authority in carrying out the business activities”, which is currently the status quo, consequently there are no specific requirements. However, in line with good practice for policy development and stakeholder handling, an analysis of the impacts has been undertaken. Some aspects do fall within the Better Regulation Framework, as these will be new regulations, such as familiarisation costs on Insolvency Practitioners from the Single Regulator change and Firm Regulation impacts. However, at this stage these impacts are expected to fall below the De Minimis threshold meaning that they are not a qualifying regulatory provision.
64. We assume for the purposes of this impact assessment the proposed Single Regulator is enacted completely with no regulatory role for RPBs and that no RPB staff will move across to the new regulator. Please note that the final costs and benefits will depend on the responsibilities of the new Single Regulator which will be known after the accompanying consultation, as well as behavioural factors and decisions that can only be addressed in the course of the transition.
65. The costs and benefits have been outlined below drawing upon information from the Insolvency Practitioner Regulation Section in the Insolvency Service, published reports, ONS statistics and Insolvency Service management information. The costs and benefits of the changes are summarised in Table 1 for the Single Regulator and Firm Regulation changes respectively. Table 2 summarises the impacts in scope of the Better Regulation Framework, as explained above this relates primarily to firm regulation impacts and excludes fees made directly by a public body in line with the Better Regulation Framework⁴⁸. Current non-monetised costs & benefits, which are expected to be monetised in the final stage Impact assessment, are summarised in Table 3.

⁴⁷ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/916918/better-regulation-guidance.pdf

⁴⁸ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/916918/better-regulation-guidance.pdf

Table 1: Monetised Costs and benefits of Single Regulator

a) Single Regulator

£m (+ve indicates benefit)	Insolvency Practitioners	RPBs	Employees at RPBs	In scope of better regulation framework?
Recurrent				
Fee paid to RPBs	+6.4			No, Single Regulator change falls out of the Better Regulation Framework
Fees paid to the Single Regulator	-4.1			No, Single Regulator change falls out of the Better Regulation Framework
Net change to business	+2.3			No, Single Regulator change falls out of the Better Regulation Framework
Non-recurrent				
Insolvency Practitioner Familiarisation costs	-2.7			Yes included
Redundancy payments		-0.2	+0.2	No, excluded as a transfer
Net change to business	-2.9			
Net change to employees			+0.2	

b) Firm Regulation

£m	Insolvency Practitioner Firms	In scope of better regulation framework?
Recurrent		
Firm regulation fees	-0.72	No, fees made directly by a public body out of scope of Better Regulation Framework
Cost to comply with firm regulation	-1.10	Yes
Cost to firms from insurance	-0.76	Indirect cost and therefore excluded from EANDCB but included in NPSV
Cost of firm visits	-0.02	No, fees made directly by a public body out of scope of the Better Regulation Framework
Net change to business	-2.6	
Non-recurrent		
Insolvency Practitioner Firm Regulation Familiarisation costs	-0.12	Yes

Net change to business	-0.12	
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Table 2: Impacts in scope of Better Regulation

Type of cost/benefit	Impact	Best Estimate £	Direct Impact on Business
One-off familiarisation cost	Familiarisation costs (Insolvency Practitioners £2.7m and firm regulation £0.12m)	2.82m	Yes
Ongoing cost to business	Cost to comply with firm regulation	1.10m	Yes
	Indirect cost to firms from higher insurance premiums	0.76m	No
Equivalent annual direct cost to business		1.5m	Yes

Table 3: Current Non-Monetised Costs and benefits of Single Regulator

Type of costs/benefit	Impact	In scope of Better Regulation Framework
Recurrent		
Ongoing cost to the Single Regulator	Cost of procurement	No
Non-recurrent		
One off cost to the Single Regulator	Single Regulator staff training costs	No
	Single Regulator set up costs (IT, recruitment, equipment etc)	No
	Single Regulator firm regulation set up costs	No

Familiarisation cost

66. The measure will affect the regulation of Insolvency Practitioners and they will need to update their knowledge to carry out their duties which will incur familiarisation costs. This familiarisation cost will extend only to Insolvency Practitioners as other parties will continue to make complaints through the usual channels and will be unaffected.
67. The last significant change to Insolvency Practitioner regulation was the Small Business, Enterprise and Employment Act 2015⁴⁹ which introduced a suite of insolvency measures. In total the familiarisation time for Insolvency Practitioners for these measures was four hours. An assumption has been made that the familiarisation time will be similar, as a Single Regulator will lead to similarly consequential changes to regulation, so Insolvency Practitioners will not need to attend any courses but will need to set aside four hours to familiarise themselves with the changes which will be an opportunity cost.

⁴⁹ <https://www.gov.uk/government/publications/small-business-enterprise-and-employment-bill-impact-assessments>

68. As of 1st January 2021, there were 1,570 Insolvency Practitioners⁵⁰; assuming each of these will spend four hours on familiarisation there will be an opportunity cost. The hourly rates of pay for Insolvency Practitioners were estimated in a 2013 report on Insolvency Practitioner fees published by Elaine Kempson⁵¹. In this impact assessment the hourly rates of pay have been uprated using GDP deflators, this approach is consistent with previous Impact Assessments⁵².
69. The opportunity cost is calculated by multiplying the updated hourly rate (£431) by the number of Insolvency Practitioners. This results in an opportunity cost estimate of £2.7m. This cost is a one-off familiarisation cost on business and is in scope of the Better Regulation Framework.
70. There will also be a familiarisation costs for firms in respect of the introduction of firm regulation. All firms offering Insolvency services will need to register, and therefore are in scope of firm regulation, however additional requirements will be made upon certain firms. In addition some “qualifying firms” will be in scope of the additional specified criteria for registration and a regime of enhanced monitoring. Such criteria may include the appointment of a Senior Responsible Person. For the purposes of this Impact assessment, firms in scope of the additional requirements are assumed to be medium or large businesses⁵³, with large businesses then in scope of the “qualifying firms” and the additional specified criteria, such as the appointment of a Senior Responsible Person. According to Insolvency Service management information there are around 590 firms that employ Insolvency Practitioners. Using Companies House records, it was estimated that 10% of firms could be classed as medium (58 firms) and 9% as large (54 firms), leaving 81% (478 firms) as small.
71. For small businesses, we assume that it will be one Insolvency Practitioner who will be responsible for familiarising themselves with the firm regulation changes. However, it is expected that familiarisation requirements will be minimal, as small businesses are assumed to be excluded from some aspects of firm regulation, therefore we assume these changes will require around 15 minutes of familiarisation. Using the same Insolvency Practitioner fees published by Elaine Kempson⁵⁴ we can estimate this one-off cost to be **£0.05m** (£431*478*0.25).
72. For medium sized businesses, we again assume that it will be one Insolvency Practitioner who will be responsible for familiarising themselves with the firm regulation changes. Given that four hours have been estimated for the other changes for the single regulator, we assume these changes will require no more than 1-hour additional familiarisation. Using the same Insolvency Practitioner fees, we can estimate this one-off cost to be **£0.025m** (£431*58*1).
73. For large businesses we have assumed familiarisation costs will fall on the Senior Responsible Person. The Senior Responsible Person is assumed to be an Insolvency Practitioner and therefore the same hourly rate applies. The responsibility could pass to an insolvency manager or other senior staff at the firm as firm regulation is not intended to be burdensome on business, but a conservative approach has been applied to the costs by assuming an Insolvency Practitioner will be responsible. Given the familiarisation will be longer than for that of a medium sized business, we have assumed 2 hours for familiarisation. Therefore, we can estimate a one-off to be £0.046m (£431*54*2) and a **total one-off familiarisation cost from firm regulation of £0.12m** which is in scope of the Better Regulation Framework.

Monetised Costs

74. The costs on business are composed as follows:

One-off

- I. Insolvency Practitioner familiarisation cost (see above)
- II. Firm familiarisation cost (see above)

⁵⁰ <https://www.gov.uk/government/publications/insolvency-practitioner-regulation-process-review-2020/annual-review-of-insolvency-practitioner-regulation-2020>

⁵¹ <http://www.bristol.ac.uk/media-library/sites/geography/migrated/documents/pfrc1316.pdf>

⁵² <https://publications.parliament.uk/pa/bills/cbill/58-01/0146/SIGNED%20-%20IA%20Insolvency%20and%20Corporate%20Governance%20Enactment%20Stage.pdf>

⁵³ <https://www.gov.uk/government/statistics/business-population-estimates-2020/business-population-estimates-for-the-uk-and-regions-2020-statistical-release-html> A medium business has 50-249 employees, with a large business have >= 250 employees.

⁵⁴ <http://www.bristol.ac.uk/media-library/sites/geography/migrated/documents/pfrc1316.pdf>

III. Cost to RPBs from redundancy, training and corporate restructuring

Ongoing

- I. Cost to firms from firm regulation fees
- II. Cost to firms to comply with firm regulation
- III. Cost to firms from compensation

Cost to RPBs from redundancy, training and corporate restructuring

75. The new Single Regulator will replace the current RPB system for regulation and monitoring of Insolvency Practitioners. This means RPBs fee income, derived from Insolvency Practitioners, and any monitoring income attributable to Insolvency Practitioner regulation will be transferred to the new Single Regulator. The reduced income may necessitate RPBs to make staffing changes such as transfers, retraining or redundancies, this represents a one-off cost.
76. The percentages of fee income lost vary (See Table 4) with a significant impact on IPA where all fee income is lost and much smaller impacts on the remaining RPBs by virtue of their more diversified business model.
77. The fee income each RPB receives goes towards fulfilling requirements and therefore it would be reasonable to assume losses of fee income have a commensurate staffing impact, so if an RPB lost no income there would be no staffing impact but if it lost all income all staff working on insolvency regulation would be affected.
78. An assumption has been made that any staffing impact would be addressed by the following means:
 - I. Staff turnover
 - II. Staff transfer/retraining
 - III. Redundancies
79. Analysis on impacts can be conducted by assuming staff reductions will be commensurate with the loss of fee income (since fee income covers cost of regulation). The Office for National Statistics⁵⁵ publish statistics on employee turnover within industries during the period January 2017 – December 2018. The industry categories used are broad and RPBs could fit into several of them including “Financial and insurance activities” which has an annual turnover of 13.5%, “Public administration and defence” 12% and overall for all categories 14.5%.
80. Assuming the lowest turnover rate of 12% from the public administration and defence category ICAEW, ICAS and CAI can accommodate the staffing impact through natural turnover of staff through the transition period which could be between two to four years and therefore there is no one-off retraining or redundancy cost.
81. However, IPA will lose its income relating to Insolvency Practitioner regulation staff. IPA may respond to this in a number of ways, such as performing the functions that the proposed Single Regulator may contract or diversifying into other areas. However, a small part of this income, 24%, may be accommodated through natural turnover using the lower bound for the transition period, but the majority, 76%, may need to be addressed through redundancy. This represents a high estimate and the eventual impact may well be lower owing to potential contract opportunities indicated previously.
82. All staff are entitled to statutory redundancy payments which are set in law⁵⁶. This is eligible for those who have worked for their current employer for more than two years and is based on earnings before tax and length of service. For each year worked for their employer an employee receives:
 - I. 0.5 weeks’ pay for each full year aged under 22

⁵⁵<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/adhocs/10685employeeturnoverlevelsandratesbyindustrysectionukjanuary2017todecember2018>

⁵⁶ <https://www.gov.uk/redundancy-your-rights>

- II. One weeks' pay for each full year aged 22 or older, but under 41
 - III. 1.5 weeks' pay for each full year aged 41 or older
83. The maximum weekly amount is capped at £544, equivalent to £28,288 before tax, and length of service is capped at 20 years for redundancy claims. IPA redundancy claims will have higher earnings so will be limited by the weekly cap.
84. Research shows the average employee in the UK will change employer every five years⁵⁷, so we can assume the average length of service will be five years.
85. Since staff require at least two years of service with their employer it is unlikely there will be many claims by staff aged under 22, especially given regulators require training and education, this leaves the older age groups. Assuming the age breakdowns of staff at IPA are reflective of the England and Wales population, ONS mid-year 2019 population statistics⁵⁹ can be used to estimate the proportion of staff aged 22 to 40, 45%, and those 41 to 64, 55%.
86. These assumptions can be bought together to estimate a cost per redundancy of £3,470⁶⁰. The cost per redundancy will depend on the terms which are confidential, however around two thirds of firms offer enhanced redundancy terms⁶¹ beyond the statutory minimum. On average the private sector pays 1.5 weeks per year of service⁶² for those aged 22-40, 50% above statutory terms. Assuming the terms are 50% above statutory redundancy for those aged 41 and older too the cost per redundancy will increase 50% to £5,200. Assuming IPA employ 50 staff⁶³ and after natural staff turnover 76% will need to be made redundant there will be 38 redundancies which will incur a **one-off £198,000 redundancy cost for IPA**. This represents a high estimate and the eventual impact may well be lower depending on decisions that can only be known after the creation of a Single Regulator. The IPA is located in London and therefore any redundancies are expected to occur here.
87. According to the Green Book⁶⁴ redundancy payments are a transfer payment and should not be part of the estimate of net present social value. Therefore, the one-off redundancy costs of **£198,000 will be a reciprocal transfer to employees**, making its net social value zero.

Cost to firms from firm regulation fees

88. The Regulatory changes will also introduce firm regulation. This imposes new responsibilities and impacts on firms which will fall within the Better Regulation Framework. Legislation will be introduced to require all firms offering insolvency services to register and meet regulatory standards. The Single Regulator would then have information gathering powers, as well as powers to discipline and sanction firms and to remove them from the register if necessary.
89. This will require the Single Regulator to create a new firm regulation function which will require one-off set up costs (such as recruitment, training and IT systems) and ongoing staff costs, including both direct and indirect costs of staff. The Single Regulator, in line with its responsibilities under Managing Public Money⁶⁵ will need to set a separate fee structure for firms to ensure cost recovery whilst ensuring small and micro businesses are not disproportionately impacted. Registration will require a registration fee and once registered, there will be a fee to pay each year. However, the impact of this fee will be out of scope of the Better Regulation Framework, which excludes fees made directly by a public body⁶⁶. The design of any such fee

⁵⁷ <https://www.lv.com/about-us/press/article/job-for-life>

⁵⁸ <https://www.bbc.co.uk/news/business-38828581>

⁵⁹ <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/datasets/analysisofpopulationestimatestool>

⁶⁰ Calculated by working out the average weekly entitlement ($0.45 \times 1 + 0.55 \times 1.5 = 1.275$) then multiplying this by the maximum weekly amount (£544) and the average service (5 years) resulting in £3,468.

⁶¹ https://www.eversheds-sutherland.com/global/en/what/articles/index.page?ArticleID=en/Employment_and_labour_law/Mean_or_average_Eversheds_redundancy_surveys

⁶² <https://www.unison.org.uk/content/uploads/2017/12/dismissal-redundancy-and-transfers1.pdf>

⁶³ As of 21st May 2021 LinkedIn recorded 50 employees working for IPA (https://www.linkedin.com/company/insolvency_practitioners_association_ipa)

⁶⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/938046/The_Green_Book_2020.pdf

⁶⁵ <https://www.gov.uk/government/publications/managing-public-money>

⁶⁶ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/916918/better-regulation-guidance.pdf

structure will need to be aware of incentives created to avoid risks of firms 'gaming the system' or engaging in regulatory arbitrage, as well as to avoid creating an unnecessary regulatory burden on small businesses.

90. All firms offering Insolvency services will need to register, and therefore are in scope of firm regulation. However, to avoid an unnecessary regulatory burden on small businesses they are expected to be excluded from some aspects of firm regulation. Therefore, small businesses will only be in scope of a nominal fee, to cover the costs of checking those who have registered. This nominal fee is not expected to exceed £50 per firm, producing a total ongoing cost of £0.024m ($478 * £50$).
91. Medium and large businesses are expected to be in scope of further aspects of firm regulation, and therefore in scope of an accompanying fee. Using Insolvency Service monitoring information and records from company's house, it is estimated that 113 businesses are in scope of such a fee out of a population of 587 insolvency businesses. Based on expected costs to the Insolvency service of £0.7m the fee per firm would need to be £6,400 on average. The nominal fee and accompanying fee represent a total ongoing cost of **£0.7m** from firm regulation fees. The impact of this fee will be out of scope of the Better Regulation Framework, which excludes fees made directly by a public body⁶⁷. The final fee structure will be chosen following the accompanying consultation.

Cost to firms to comply with firm regulation

92. The Insolvency Practitioner firms will need to comply with the new firm regulation, in particular they will all be required to register and may need to change their processes to meet the regulatory standards. Registration would be required once a year, however the time required to register does not necessarily need to be a burdensome process for firms, for example it is estimated to take between 5-15 minutes to set up a limited company on Companies House^{68,69}, whilst it is estimated by the Insolvency Service that it currently takes Insolvency Practitioners around 30 minutes to complete their current annual licensing application.
93. The total number of firms in scope (587) can again be broken into small businesses (478), large businesses that are in scope of additional criteria for registration, and a regime of enhanced monitoring (54) and medium sized businesses which are not (58). Assuming 30 minutes for completion for businesses, the higher end of the Insolvency Practitioner licensing estimate (30 minutes), we can estimate the ongoing firm regulation cost assuming completion is done via an IP ($£431 * 0.5 * 587$) to be **£0.1m**. In using these assumptions, the cost has been conservatively calculated.
94. There will also be an ongoing cost for qualifying firm's (assumed to be larger businesses in this IA) that will be subject to the additional specified criteria. Such firms will need a Senior Responsible Person to fulfil firm regulation requirements which will result in an opportunity cost. Through the accompanying consultation the Government will work with the profession to consider the additional specified criteria. This need not be burdensome for firms as other regulators such as the Royal Institution of Chartered Surveyors⁷⁰ (RICS) and the Financial Reporting Council (FRC)⁷¹ employ firm regulation. The Insolvency Service uses electronic systems extensively which can mitigate burdens on business. The time requirement will be difficult to estimate until the additional criteria have been set. Comparator regulators like RICS have responsibilities embedded making it difficult to disaggregate firm regulation costs. At this stage an assumption has been made that the time requirements for a Senior Responsible Person will be around 5 days (40 hours) as they will need to be ready for any monitoring visits in the year that would take around 2 days in addition to their other responsibilities. The **total ongoing opportunity cost will be £0.9m** ($£431 * 54 * 40$).
95. The fees to cover the wider cost of regulation would provide for a certain number of complaint investigations per year and a scheduled monitoring visit. However, there could be an additional

⁶⁷ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/916918/better-regulation-guidance.pdf

⁶⁸ <https://www.qualitycompanyformations.co.uk/blog/how-long-does-it-take-to-set-up-a-limited-company/>

⁶⁹ <https://www.theformationscompany.com/knowledge-base/how-long-does-it-take-to-register-a-new-company#:~:text=The%20amount%20of%20time%20it,your%20business%20within%2024%20hours.>

⁷⁰ <https://www.rics.org/uk/upholding-professional-standards/regulation/firm-regulation/>

⁷¹ <https://www.frc.org.uk/>

charge levied on an individual insolvency practitioner or firm as appropriate to cover the cost of any complaint investigation above that limit, and similarly for any unscheduled or additional monitoring visits. The firms in scope of this cost will be those in scope of the additional specified criteria (54), i.e. large businesses.

96. It is estimated that firms would be visited once every three years, or 18 firms per year. Using current Insolvency Service monitoring visits as an estimate, we can assume that it will take 2 days work for a senior member of staff. Adding in travel costs⁷² produces an estimated cost to the Insolvency Service of £0.02m. This cost would be passed onto business in the additional charge. However, the impact of this fee will be out of scope of the Better Regulation Framework, which excludes fees made directly by a public body⁷³.
97. There will be an additional cost to business for their time involved in the investigation/visit. Assuming 2 days of work for the firm and using the estimated cost per hour for a senior responsible person (£431) we can estimate the cost to be **£0.1m**. This represents an **opportunity cost to business**.
98. The Government will work with the profession to consider a suitable set of qualifying criteria for firms which must also be subject to the Additional Requirements Regime for registration.
99. In summary the total ongoing annual costs to business complying with firm regulation that fall under the Better Regulation is **£1.1m** and is composed as follows:
 - I. Opportunity cost to register once a year - £0.1m
 - II. Senior Responsible Person opportunity cost - £0.9m
 - III. Opportunity cost from Single Regulator visits to firms - £0.1m

Cost to firms from compensation

100. One option for compensation would be that under the Government's proposal for a single regulator, the Single Regulator would have a range of disciplinary sanctions to reprimand, fine, direct or to withdraw individual authorisation or firm registration. Compensation can be defined as some additional payment for the inconvenience or distress caused by the act or omission.
101. The Insolvency Service currently operates a compensation system where there has been a service failure on the part of an Official Receiver. It believes a similar system could be put in place in respect of insolvency practitioners/firms. Under the Insolvency Service scheme, the amount of compensation payable for undue distress or worry is generally capped at £250. Where there is financial loss as a result of the actions on an Insolvency Practitioners/firm, we can assume the limit for compensation would probably be lower and certainly no more than that of the Financial Ombudsman Scheme (FOS) where the maximum award that the FOS can make is £355,000 for complaints involving a financial loss⁷⁴. The Government seek views in the accompanying consultation on whether such a compensation scheme should be introduced for the insolvency profession and how it might operate, for example whether it would be sensible to join an existing mechanism, such as the FOS, or whether there should be something specific for the insolvency profession and how it might be funded.
102. Any costs from compensation will not fall under the Better Regulation Framework because of the fines and penalties exclusion⁷⁵, however the cost-benefit analysis for the measure should still reflect all the costs and benefits.
103. We can estimate the annual costs associated with this compensation by using complaints data from the annual review of IP regulation.⁷⁶ A decision to use 2019 data rather than 2020 has been made to mitigate the impact of Covid-19. In 2019, 428 complaints were referred to the RPBs. Of these, 12 related to a sale or dealing with assets, and so these can be used as a proxy for those that may be in scope of higher compensation. The complaints can also be categorised as from business, individuals, or from the public sector. Using this information, we can estimate 416

⁷² Insolvency Service Management Information

⁷³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/916918/better-regulation-guidance.pdf

⁷⁴ [Compensation: Financial Ombudsman Service \(financial-ombudsman.org.uk\)](https://www.financial-ombudsman.org.uk/)

⁷⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/916918/better-regulation-guidance.pdf

⁷⁶ <https://www.gov.uk/government/publications/insolvency-practitioner-regulation-process-review-2019/annual-review-of-insolvency-practitioner-regulation-2019>

complaints in scope of compensation payable for undue distress or worry capped at £250, meaning a minimum cost of £0 and a maximum of £104,000 (£250*416). Without further data on what may be in scope of £250 compensation we can take the midpoint as a best estimate, £52,000. Twelve complaints are in scope of higher compensation through the Financial Ombudsman or a similar Insolvency Service led scheme. Financial Ombudsman complaints data⁷⁷ shows that 38% of complaints are upheld and so would likely receive compensation. Therefore around 5 of the complaints in scope we would expect to be upheld and receive higher compensation. The nature of complaints will be varied with some more serious cases involving adverse financial impact. Proving the actions resulted in financial losses requires burden of proof so fewer cases will make the maximum award claim. We can estimate a minimum cost of £0 and a maximum of £1.8m. Due to fact that fewer cases will make the maximum award claim a best estimate can be made by taking the first quartile of £0.44m. This provides a total cost to business of **£0.5m**.

104. This £0.5m will then be transferred to the complainants, meaning the net social value is cost neutral. However, the cost will not be neutral to business as by breaking down the 421 (416+5) complaints by type of complainant we can expect £394,000 to go to business, £100,000 to individuals and £1,000 to go to the public sector. The net business cost is £0.1m however any impacts on business from the fines would not fall under the Better Regulation Framework because of the fines and penalties exclusion⁷⁸. However, these figures are estimates and it should be caveated that number of complaints may not stay constant under a new system, and the proportions of compensation distributed may not reflect proportions by type of complainant.
105. The compensation scheme will also need to be funded. There are options to fund this scheme and the government welcomes views during the accompanying consultation. One option would be for the Single Regulator to be able to order that an Insolvency Practitioner/firm pay compensation after a complaint and/or investigation into the Insolvency Practitioner/firms behaviour. This would be paid by the Insolvency Practitioner/firm using their own money or relying on insurances. Insolvency Practitioners are already required to have personal indemnity insurance; however, this policy change may increase the premium charged, thereby resulting in an indirect cost to business⁷⁹.
106. Estimates for the increased cost for insurance can be made by looking at Lloyds of London Annual Reports, which show the combined ratio over the last 10 years^{80,81}. The average combined ratio between 2011-2020 was around 100%. The combined ratio is a measure of an insurer's profitability. It is the ratio of the net expenses plus claims incurred net of reinsurance to earned premiums. A ratio under 100% shows premiums earned exceed costs and therefore a profit is made and a ratio over 100% reflects a loss, therefore Lloyds of London has been breakeven on average. The Lloyds annual report and industry data⁸² show the average expense ratio is around 35% and therefore the loss ratio will be 65% to reach a combined ratio of 100%. Assuming the estimated loss from compensation of £0.5m provides an estimated cost of annual insurance premiums of **£0.76m** (0.5/0.65). This resultant increase in premiums will be an indirect cost on business.

Monetised Benefits

Benefit to Insolvency Practitioners from lower fees

107. Currently there are four RPBs, with the two main regulators, IPA and ICAEW, covering about 40% and 50% of Insolvency Practitioners respectively. The remaining two, ICAS and CAI, generally cover Scotland and Northern Ireland respectively for which different insolvency rules and legislation applies.
108. Three RPBs, ICAEW, ICAS and CAI, are accountancy bodies and receive income from sources other than purely insolvency regulation such as membership fees and qualifications for

⁷⁷ https://www.financial-ombudsman.org.uk/data-insight/quarterly-complaints-data_Q1_2021/22

⁷⁸ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/916918/better-regulation-guidance.pdf

⁷⁹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/790016/RPC_case_histories_-_direct_and_indirect_impacts_March_2019_1_.pdf

⁸⁰ Lloyds AR 2015 (1).pdf

⁸¹ [Lloyds AR 210409 NO sig.pdf](#)

⁸² http://thoughtleadership.aon.com/Documents/ARA_FY_20210415.pdf

accountants. This makes estimating the impact of losing RPB status difficult as we do not know what proportion of fee income is attributable to Insolvency Practitioner regulation. However, by virtue of the varied activities of these organisations any impact would be smaller.

109. The IPA solely acts as an RPB and therefore can be used to estimate fee income attributable to Insolvency Practitioner regulation and the cost per Insolvency Practitioner for an RPB to perform regulatory duties. The IPA should be reasonably reflective of the wider market as it constitutes 40% of all Insolvency Practitioners.

110. The annual report for the IPA⁸³ shows that income for 2019⁸⁴ totalled £2.9m of which £2m came from memberships and £0.5m from monitoring visits with the remainder from exams, events and investments. The memberships and monitoring visits income will be impacted by the creation of a Single Regulator because Insolvency Practitioners will have a lesser need for membership as the Single Regulator will perform regulation and they will have to make a choice regarding membership, also monitoring will likely be outsourced. For the purposes of the impact assessment it has been assumed Insolvency Practitioners would cease fee payments for both sources, this represents a high estimate as Insolvency Practitioners may continue their memberships, however this cannot be known ex ante. As of January 2021, IPA authorised 617 Insolvency Practitioners and therefore the fee per Insolvency Practitioner authorised is £4,100 (£2,528,000/617).

111. This estimate can be used to calculate the fee income Insolvency Practitioners pay to each of the RPBs by simply multiplying the fee per Insolvency Practitioner by the number of Insolvency Practitioners authorised as illustrated in the table below (see “Fee income attributable to insolvency regulation”):

Table 4: Insolvency Practitioners authorised and fee income by RPB

RPB	Insolvency Practitioners Authorised	Appointment takers	% Appointment takers	Estimated Fee income attributable to Insolvency regulation (£m) ⁸⁵	Total fee income (£m) ⁸⁶	Estimated % fee lost
IPA ⁸⁷	617	523	85%	2.53	2.53	100%
ICAEW ⁸⁸	820	648	79%	3.30	50.5	7%
ICAS ⁸⁹	87	74	85%	0.36	18.8	2%
CAI ⁹⁰	46	43	93%	0.21 ⁹¹	32.3	1%

112. Considering the fee income from Insolvency Practitioner regulation for all the RPBs the total cost for Insolvency Practitioners is **£6.4m. This is the current ongoing cost of regulatory enforcement.**

113. RPBs fee income will be transferred to the Single Regulator, who will perform insolvency regulation and set any fees on a cost recovery basis. The wider impacts section of this Impact assessment estimates the ongoing cost to the Single Regulator will be £4.1m, this will require lower Insolvency Practitioner fees than currently to cover costs. These costs will be covered by the fee for the Single Regulator, making their impact cost neutral.

⁸³ <https://insolvency-practitioners.org.uk/uploads/documents/b4d7c0073420e51ad8aaa17824ccb6c1.pdf>

⁸⁴ the 2019 report has been used rather than 2020, due to the mitigating impacts of Covid on the 2020 report

⁸⁵ IPA taken from 2019 Annual Report and remaining RPBs calculated by multiplying £4,100 by the respective number of IP's authorised

⁸⁶ Sourced from the 2019 Annual Report for each of the RPBs. The year 2019 was chosen to avoid any one-off impacts to fee income from the Covid-19 pandemic.

⁸⁷ <https://insolvency-practitioners.org.uk/uploads/documents/b4d7c0073420e51ad8aaa17824ccb6c1.pdf>

⁸⁸ <https://www.icaew.com/-/media/corporate/files/about-icaew/who-we-are/annual-review/2019/annual-review-2019.ashx?la=en>

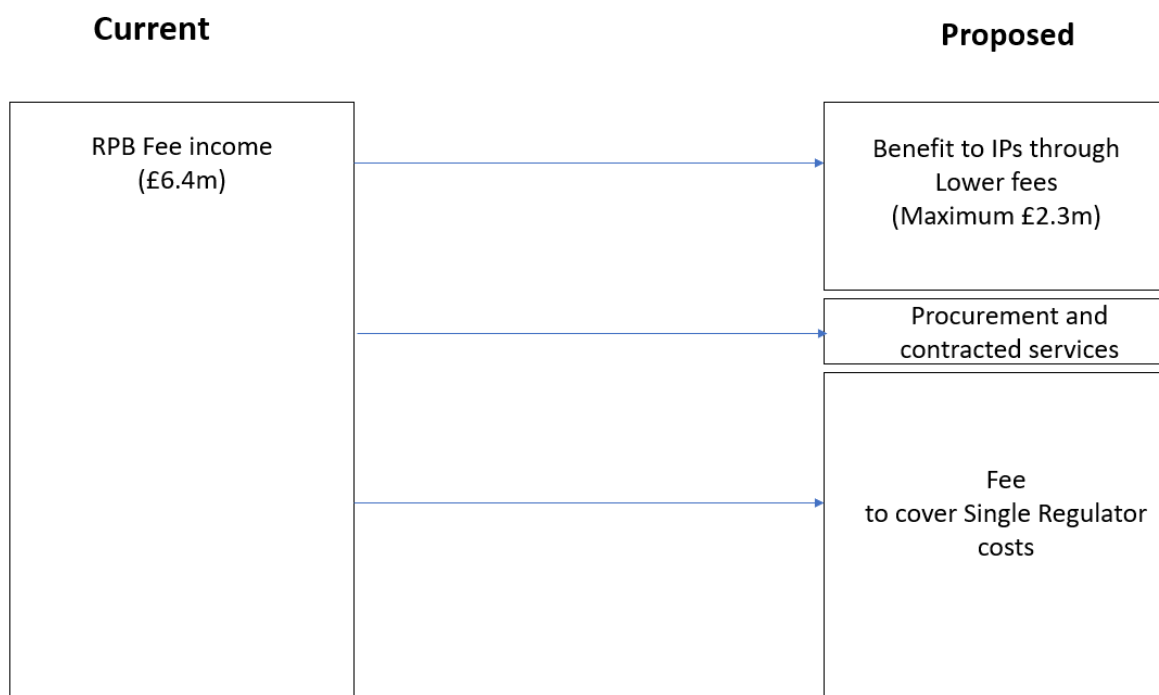
⁸⁹ https://www.icas.com/__data/assets/pdf_file/0011/536276/Year-End-Financial-Statements-Final-with-signatures.pdf

⁹⁰ <https://www.charteredaccountants.ie/docs/default-source/Comms/General/chartered-accountants-ireland-annual-report-2019.pdf?sfvrsn=2>

⁹¹ The fee income from Insolvency Practitioner regulation has been adjusted 10% higher for CAI to reflect the higher than average percentage of appointment taking Insolvency Practitioners

114. It is feasible that costs for the Single Regulator could be lower than RPBs as in 2019, upper-skilled occupations in the private sector in medium and large enterprises, (that is those with 50 or more employees so similar in size to the RPBs), on average, earned more than similar occupations in the public sector⁹².
115. This represents a cost saving to businesses as the current fees to RPBs (£6.4m) are expected to be higher than Single Regulator fees (£4.1m) and therefore Insolvency Practitioners benefit from saving (£2.3m) which is illustrated in (Figure 4). However, the difference will be lower than this as certain functions will be contracted out, the costs of which will need to be covered by fees. Therefore, resulting in a **maximum ongoing benefit to Insolvency Practitioners of £2.3m annually through lower fees, but this will be lower due to the procurement costs to contract out**. However, procurement costs would need to be >£2.3m to turn the benefit to Insolvency Practitioners into a cost.

Figure 4: The economic transfer of RPB fee income from the creation of a Single Regulator⁹³



Non-monetised benefits

116. The measure will have wider non-monetised impacts, particularly since a Single Regulator will give those involved in insolvency proceedings confidence in the regulatory regime.

117. The non-monetised benefits are outlined below:

- I. Economies of scale – consolidating into a Single Regulator will rationalise regulatory activity, improving efficiency whilst lowering cost. Part of this has been monetised through lower costs, however further efficiencies will be introduced by removing duplication (e.g. conducting multiple monitoring visits in the same location), better access to data and taking a holistic view to improve enforcement outcomes and consistency. This should enable greater regulatory activity at a higher standard.
- II. Increased public confidence in the regulatory regime and positive changes in perception. This will lead to an improved international reputation and wider economic benefits below:

⁹²<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/articles/publicandprivatesectorearnings/2019#:~:text=The%20biggest%20difference%20between%20public,with%20fewer%20than%2011%20employees.>

⁹³ The Figure is for illustrative purposes and the eventual breakdown of transfers may differ depending on the responsibilities of RPBs, the Single Regulator and decisions on contracting out which will only be known following consultation.

- Improved confidence and lower costs to unsecured creditors helping the business community invest more
- Improved confidence and lower costs to secured creditors resulting in greater business lending and lower risk premiums being charged on loans

118. The business net present value is estimated to be **-£5.2m**. The non-monetised benefits would improve the net present value and could be sufficient to turn the present value positive, however it is not possible to confirm this as the benefit is not quantifiable. These benefits do not need to be that substantial to justify the policy in terms of costs and benefits for the regulations to break even. For example, with over 4 million companies and an equivalent annual net direct cost to business of £1.5m, companies would only have to have a willingness to pay⁹⁴ of around £0.38 per year, lower than the cost of a pint of milk⁹⁵ for the measure to breakeven, this excludes the benefits that arise to other actors in the economy.

Risks and assumptions

119. The introduction of a Single Regulator will create a transition period between the RPB based regulatory regime and the new Single Regulator which may present a regulatory risk. A transition period could be between two to four years. During this period the incentives for RPBs to perform regulatory duties robustly are not as strong, as RPBs understand their work will cease and so may not perform to the same level, particularly as any action by the Insolvency Service to rectify this behaviour during the transition would take time. In addition, natural wastage could mean the regulatory activity undertaken as the end date approaches will be understaffed. Together, both represent a regulatory risk potentially over a considerable period of time but can be mitigated by utilising existing tools to ensure RPBs adhere during the transition period and ensuring the transition period is flexible so that a fully functional Single Regulator can be in place before it ends. A further mitigation is that certain functions will be contracted out in the future, so RPBs may want to maintain performance over the transition period to be best placed to bid for those contracts.

120. There is a risk that the formation of a Single Regulator could result in a loss of expertise that could affect the delivery of a Single Regulator. As identified in the cost benefit analysis section the replacement of RPBs with a Single Regulator may result in redundancies in one of the larger RPBs whilst the remaining ones will meet the staffing impact through natural wastage and redeployment if possible. Given the proposed impact on redundancies is a high estimate and since most of the staffing impact will be accommodated through natural wastage there will be a smaller pool of experienced staff with regulatory expertise on which any Single Regulator can draw upon for staffing. Though the Insolvency Service can mitigate this risk by putting funding in place to ensure any shortfall of regulators is filled, some regulatory expertise and knowledge may still be lost.

121. The scale and nature of costs and benefits cannot be precisely determined in advance, being dependent on the final demarcation of responsibilities between RPBs and the Single Regulator which will only be known at conclusion of the accompanying consultation as well as behavioural factors and decisions that can only be addressed in the course of the transition.

122. The analysis assumes staff reductions will be commensurate with the loss of fee income (since fee income covers cost of regulation) and be met by a combination of natural wastage, staff transfer/retraining and redundancies. This will ultimately be a decision for RPBs. The proportion in each group has been estimated, any redundancy and training costs will be subject to assumptions about length of service and number of staff, this could lead to inaccurate results.

123. The changes will also introduce firm regulation with a separate fee structure to cover costs whilst ensuring small and micro businesses are not disproportionately impacted. The design of any such fee structure will need to be cognisant of incentives created and there is a risk that this may lead to firms gaming the system or engaging in regulatory arbitrage.

⁹⁴ Willingness to pay techniques, such as stated preference, are frequently used to estimate the benefits for a good or service where there is no market price. The implication being that an agent's willingness to pay for a good or service is equivalent to the benefit from they derive from it.

⁹⁵ <https://www.ons.gov.uk/economy/inflationandpriceindices/timeseries/cznt/mm23>

Impact on small and micro businesses

124. The measure may impact on small and micro business in the following ways:

Recognised Professional Bodies (RPBs)

125. The only cost impacts from the measure is on RPB fees resulting in annual cost of £6.4m and one-off redundancy costs of £198,000 on an RPB. Each RPB employs at least 50 employees⁹⁶ and therefore there is no cost on small and micro businesses. The annual cost to each RPB is shown in Table 1.

126. As a result, the burden on RPBs will not fall on small and micro business.

Insolvency Practitioners

127. R3, the Association of Business Recovery Professionals which represents 97% of Insolvency Practitioners, in a previous policy consultation estimates that 46% of its members can be classified as small and micro businesses⁹⁷.

128. The measure results in an economic transfer from RPBs to Government and Insolvency Practitioners through lower fees. The ongoing annual benefit to Insolvency Practitioners has been estimated at maximum £2.3m though this will be lower due to the costs of contracting out certain functions. Since there will be an equal saving to each Insolvency Practitioner this does not disproportionately affect small and micro businesses as all Insolvency Practitioners stand to benefit from lower fees and an estimated 46% of this saving will accrue to small and micro businesses.

129. However, for small and micro businesses such fees typically constitute a higher proportion of business costs compared to larger firms so this will may be more beneficial for smaller firms.

Firm Regulation

130. All firms offering Insolvency services will need to register, and therefore fall in scope of firm regulation. However, to avoid an unnecessary regulatory burden on small businesses they are expected to be excluded from some aspects of firm regulation. Therefore, small businesses will only be in scope of a nominal fee, to cover the costs of checking registration. This nominal fee is not expected to exceed £50 per firm, producing a total ongoing cost of £0.024m (478*£50). The costs of additional firm regulation requirements on the Single Regulator will be met by a fee on the medium and large businesses offering insolvency service to ensure cost recovery. Small and micro businesses will be exempt and so will be unaffected.

131. In order to comply with the new firm regulation firms offering insolvency services will be required to register once a year. This will mean that 478 small businesses will need to register each year, which represents an opportunity cost. Assuming 30 minutes for completion for businesses, we can estimate the ongoing cost to small businesses, assuming completion is done via an Insolvency Practitioner (£431*0.5*478), to be £0.10m.

Wider impacts

Insolvency Service

132. The new Single Regulator will sit within the Insolvency Service and there will be ongoing costs to provide this service.

133. In particular the Single Regulator will carry out the following functions:

- I. Standard setting
- II. Complaint Investigation
- III. Targeted and intelligence led investigations
- IV. Disciplinary and enforcement proceedings

⁹⁶ As of 21st May 2021 LinkedIn recorded 50 employees working for IPA (https://www.linkedin.com/company/insolvency_practitioners_association_ipa)

⁹⁷ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/341089/Insolvency_Proceedings__Debt_relie_orders_and_petition_limits_v3.pdf

134. The creation of this new function will require one-off set up costs to the Single Regulator around aspects such as recruitment, training of current staff and setting up IT systems. These costs are not known at this stage and therefore are non-monetised. However, these will be calculated following the accompanying consultation, during the project set up phase.
135. There will be an ongoing staff cost to the Single Regulator, including both the direct and indirect costs of staff, as well as travel costs. Based on the expected functions to be carried out in-house, these costs are estimated to be in the region of £4.1m⁹⁸. There will also be a cost for the Single Regulator to cover elements that will be contracted out:
- Consideration of applications and authorisation of Insolvency Practitioners in accordance with standards and requirements set by the Single Regulator
 - Provision of education and training for the insolvency profession
 - Routine monitoring - regular monitoring of Insolvency Practitioners to ensure compliance with statutory and regulatory requirements and provision of a report to the regulator on the outcome of monitoring
136. There will also be costs for the Single Regulator incurred from the introduction of firm regulation. Ongoing costs for firm regulation are estimated to be £0.7m. These costs will be covered by the fees for firm regulation, making their impact on the Single Regulator cost neutral. There will also be costs incurred from the introduction of additional complaint investigations/monitoring visits, estimated to be £0.02m. These costs will be recovered through an additional charge levied on an individual Insolvency Practitioner or firm as appropriate to cover the cost of any additional complaint investigation or additional monitoring visits, making the cost impact neutral on the Single Regulator.

Impact on justice system

137. There would be an internal review process for considering any appeals against complaints or disciplinary or enforcement proceedings. If the matter was still not resolved the route of appeal would be to the Court.

Equalities Impacts

138. The proposed changes will primarily affect Insolvency Practitioners, their existing regulators (and staff who are employed by them) and firms who provide insolvency services.
139. Data on protected characteristics amongst Insolvency Practitioners is currently an evidence gap. Nevertheless, where specific actions, arising as a result of the proposals assessed here, may affect Insolvency Practitioners, such as in the case of measures related to compensation, it will be on the basis of their conduct and not their individual characteristics.
140. There is no known evidence to suggest that different groups have different needs which are relevant to the change in the regulation of Insolvency Practitioners. The purpose of this legislation is to improve the regulatory regime which Insolvency Practitioners are subject to and thereby, increase public confidence in the profession. The measure will not restrict access to the regulatory regime.
141. Whilst affected entities (firms that will be captured by the new regulatory regime) will employ individuals who have protected characteristics, the impact of this proposal will be on the entire firm or company and not on any specific individual or groups therein.

A summary of the potential trade implications of measure

142. The impacts from the measure are not considered to impact international trade and investment.

Monitoring and Evaluation

143. It is not anticipated that a statutory review for this regulation will be required. The majority of costs and benefits from this regulation fall outside of the Better Regulation framework, with those

⁹⁸ Direct costs of staff of around £2.5m, indirect costs of staff around £1.5m, travel costs of around £50,000

falling inside the framework are expected to fall below the De Minimis threshold. However, the Insolvency Service intends to conduct its own proportionate evaluation to understand if the regulation is working as intended. This will occur within five years of the single regulator being established.

144. The evaluation is expected to take the form of a process evaluation in line with the Magenta Book⁹⁹. This will enable the Insolvency Service to see if the policy objectives have been met by understanding if the design is working as intended. Learnings from the evaluation can then be used by the Single Regulator to apply adjustments where required to strengthen the regime.

145. A logic model of the policy can be seen in Figure 5:

Figure 5: Logic model

Context	Inputs	Outputs	Outcomes	Impacts
<p>A call for evidence was published in July 2019 which noted several problems with the current regulatory framework</p> <p>Overall, the responses to the call for evidence indicated a lack of confidence in the current RPBs to hold Insolvency Practitioners properly to account and that problems have been identified around both efficiency and fairness</p>	<p>Introduce a new independent Single Regulator with responsibility for regulation of firms as well as individual Insolvency Practitioners, that sits within the Insolvency Service, via primary legislation</p>	<p>Independent statutory regulation of the Insolvency Practitioner profession</p> <p>A user-friendly system to submit complaints against Insolvency Practitioners/firms and an efficient framework to address them</p> <p>A framework for monitoring and investigation that will deliver transparent, consistent and effective enforcement outcomes against Insolvency Practitioners</p> <p>Address apparent conflicts both between the role of an Insolvency Practitioner and the business model of firms offering insolvency services, as well as between practitioners and the membership model of RPBs that regulate them</p>	<p>Those involved in insolvency proceedings have confidence in the regulatory regime.</p> <p>Consolidating into a Single Regulator will rationalise regulatory activity, improving efficiency whilst lowering cost, providing economies of scale and higher standards.</p>	<p>If those involved in insolvency proceeding have confidence in the regulatory regime it will improve the international reputation of the UK's insolvency framework and provide wider economic benefits.</p> <p>The UK will align with international best practice principles.</p>

146. The process evaluation will base research questions around the outputs and outcomes outlined in the logic model, before obtaining appropriate evidence to address these which may include both qualitative and quantitative data. It is expected that the evidence gathering, and analysis will be conducted mostly in house.

⁹⁹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/879438/HMT_Magenta_Book.pdf

147. Broadly research questions could include;

- I. Does the single regulator provide independent regulation of the Insolvency Practitioner profession?
- II. Is the system used to submit complaints user-friendly?
- III. Is an efficient framework in place to address complaints?
- IV. Does the monitoring and investigation framework provide transparent, consistent and effective enforcement outcomes against Insolvency Practitioners?
- V. Have apparent conflicts been adequately addressed?
- VI. Do those involved in insolvency proceedings have confidence in the regulatory regime?

148. These high-level questions are in line with the suggested number in the Magenta Book¹⁰⁰ to keep an evaluation manageable.

149. During the setup of the Single Regulator the analysis and performance team within the Insolvency service will be consulted to ensure appropriate monitoring data can be collected to help inform the evaluation.

¹⁰⁰ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/879438/HMT_Magenta_Book.pdf