

<b>Title: A new fee structure for official receiver services</b>  <b>IA No: BISINSS15003</b>  <b>Lead department or agency:</b> The Insolvency Service <b>Other departments or agencies:</b> Department for Business Innovation and Skills	<b>Impact Assessment (IA)</b>		
	<b>Date: 18/03/16</b>		
	<b>Stage: Final</b>		
	<b>Source of intervention: Domestic</b>		
	<b>Type of measure: Secondary legislation</b>		
			<b>Contact for enquiries: David Miller 0207 637 6445</b>
<b>Summary: Intervention and Options</b>			<b>RPC Opinion: GREEN</b>

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2014 prices)	In scope of One-In, Two-Out? Measure qualifies as
0	0	£3.4m	No   N/A

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

A significant fall in caseloads for official receivers (officials dealing with the administration of bankruptcies and companies in compulsory liquidation) is leading to a forecast operational deficit of around £9m in 2016/17. The problem under consideration is the need to ensure fees continue to cover costs. In addition, the fees need to be set in such a way as to comply with "Managing Public Money" principles. Government intervention is the only means available for raising income for the Insolvency Service, if this is not possible, the forecast deficit may need to be funded by the Department of Business, Innovation and Skills and ultimately by taxpayers.

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

The overall intention of the changes to the fees is to introduce a new official receiver fee structure that ensures the fees are set in a way that complies as far as possible with Managing Public Money i.e. on a full cost recovery basis. There will be a suite of different fees which recognise the different functions of the official receiver and a more transparent way of recovering the necessary planned and managed cross-subsidy. This means that creditors in asset rich cases will no longer bear a disproportionate burden for those cases which are asset poor (up to £80,000 can be paid under the current Secretary of State fee).

This should bring the insolvency fee regime into line with Managing Public Money principles.

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

Do nothing: This option would not meet Managing Public Money principles and would result in a predicted operational deficit on official receiver cases of around £9m in 2016/17.

Option 2: Full cost recovery by individual case: Approximately 50% of official receiver cases have no assets. This option would only work if the full cost of the case was paid for in full up front. It would go against the principle of allowing access to debt relief for those that need it and the cost would be a significant deterrent.

Option 3: (Preferred Option) A new fee structure that consists of a suite of different fees which recognise the different functions of the official receiver and is more transparent in terms of the necessary planned cross subsidy.

<b>Will the policy be reviewed?</b> It will be monitored internally. <b>If applicable, set review date:</b> 04/2017					
Does implementation go beyond minimum EU requirements?				N/A	
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		<b>Micro</b> Yes	<b>&lt; 20</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)		N/A		<b>Traded:</b> 0	<b>Non-traded:</b> 0

**I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.**

Signed by the responsible Minister: Anna Soubry Date: 29 June 2016

# Summary: Analysis & Evidence

# Policy Option 1

Description: A new fee structure for official receiver services

## FULL ECONOMIC ASSESSMENT

Price Base Year 2015	PV Base Year 2016	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	High: 0	Best Estimate: 0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A	7.9	68.0
High	N/A	7.9	68.0
Best Estimate	N/A	7.9	68.0

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

The higher fees, and the introduction of new fees, will cost £7.9m to creditors. Of this, petitioners will incur a higher cost to initiate bankruptcy or liquidate companies, estimated to be £1.4m. New fees will be payable to establish an income payment order/agreement and on refunding deposits for dismissed/withdrawn petitions which will cost creditors £0.3m and £0.2m respectively. There will be a cost to the Insolvency Service to change IT infrastructure of less than £0.075m.

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

There will be no non-monetised costs from this proposal.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	7.9	68.0
High	N/A	7.9	68.0
Best Estimate	N/A	7.9	68.0

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

On current case forecasts the changes will increase insolvency fee income by up to £7.9m. This is transfer cost from creditors. Creditors in some cases with significant assets will benefit from a reduction in fees paid to the Insolvency Service.

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

This will provide a more stable funding platform for official receivers and will be more transparent for users. The new fee structure will comply with Managing Public Money principles that fees should cover costs.

### Key assumptions/sensitivities/risks

Discount rate (%) 3.5

Case loads may be lower than forecast meaning the official receiver deficit will not be eliminated as planned by 2017/18. The changes in the cost of petitioning cases may lead to a decrease in the number of petitions being presented which in turn will lead to fewer cases and assets being available to fund official receiver work.

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: N/A	Benefits: N/A	Net: N/A	No	N/A

## Evidence base

### Policy background

1. Official receivers have a statutory duty to consider investigating the causes of all bankruptcy cases and must investigate the cause of failure and the way the company was run in all compulsory liquidation cases. Except for those cases where an insolvency practitioner is appointed as trustee or liquidator, the official receiver will as trustee or liquidator, to deal with the estates of insolvent individuals and companies in compulsory liquidation, making distributions to creditors where there are sufficient assets to do so. Official receivers cannot refuse to take cases.
2. Official receivers administer two types of insolvency cases: bankruptcy (debtor petitions and creditor petitions) and company compulsory liquidation. A debtor's petition bankruptcy is where an individual petitions to make themselves bankrupt while a creditor's petition bankruptcy is where any creditor<sup>1</sup> who is owed more than £5,000 can petition to make the debtor bankrupt. A company, its directors, or the creditors of a company (among other persons) may apply to the court for the company to be wound up (compulsory winding up/ liquidation). The Secretary of State may also petition to wind up a company in the public interest. Approximately 90% of compulsory winding up cases are on the petition of a creditor.
3. Currently the work of official receivers is funded by charging a case administration fee on each bankruptcy or company case and through separate distribution fees where there are sufficient assets from which to make a payment to creditors. The case administration fees are recovered in part through a deposit paid by the debtor or creditor petitioner when applying to court for a bankruptcy or winding-up order. The balance of the fee is recovered from any assets realised in the case. Not all cases have assets or sufficient assets to pay the balance of the fees however, so a separate fee, the Secretary of State Fee, is charged on the realisation of assets on a sliding scale, capped at £80,000 to those estates which have assets. This helps to offset the income shortfalls on asset poor cases and contributes towards covering the costs incurred by official receivers in performing their duties.

### Problem under consideration

4. When the current funding system was introduced in 2010, it was envisaged that asset levels within cases would be such that the Insolvency Service would have a stable funding regime which, in effect, would be met by the users of its services.
5. However, in the last 5-6 years, there has been a significant decline in case numbers, particularly in debtor petition bankruptcies, falling from 63,804 in 2009 to 11,423 in 2015 and they continue to fall. Therefore there are fewer cases with assets against which cost recovery can be made.

**Table 1: Bankruptcy and Company Compulsory Winding Up Orders, 2007 to 2015**

Year	Debtor petitioned cases	Creditor petitioned cases	Compulsory company winding up cases
2007	54,433	10,047	5,165
2008	56,600	10,828	5,494
2009	63,804	10,866	5,643
2010	50,631	8,542	4,792
2011	34,073	7,803	5,003
2012	25,192	6,595	4,261
2013	19,194	5,377	3,632
2014	15,563	4,782	3,755
2015	11,423	4,374	2,874

<sup>1</sup> A bankruptcy proceeding can be initiated jointly by creditors if their collective debts exceed the limit.

6. Significant action has been taken to reduce operating costs, with significant reductions to the cost base for official receivers. For example, the Insolvency Service has reduced its staff costs for official receivers from £58.3m and estate costs of £10.7m in 2010/11 to £25.5 and £5.4m respectively in 2015/16. In recent years the Insolvency Service has also benefited from higher than expected asset realisations which are expected to decrease. Overall, the consequence of the fall in case numbers means that without significant fee changes there will be a operational deficit in the funding of official receiver services of around £9m in 2016/17.
7. It has not been possible to reduce costs sufficiently to remove the forecast deficit due to the volatility in both case numbers and asset levels, and also because some overhead costs cannot be reduced quickly enough, meaning the fixed cost per case has risen significantly. The Insolvency Service now needs a revised fee funding structure for official receivers that is more resilient to future fluctuations in its customer base, without the need to rely on tax payer funds and which adheres to the long held principle that those who use its services should pay for them.
8. At the same time, the existing fee regime relies heavily on a cross subsidy mechanism whereby the asset rich cases bear a disproportionate amount of the costs and this needs to change in order to ensure better alignment with managing public money principles.

### Rationale for intervention

9. The economic rationale for government intervention in insolvency and bankruptcy cases is that it is necessary to ensure a collective approach is taken by creditors when dealing with those companies in financial distress in response to the 'prisoner's dilemma' faced by creditors. That is, in the event of a default, each creditor will have the incentive to be the first one to collect the assets of the insolvent. This approach will force the debtors to sell the assets piece by piece in order to pay each creditor in turn. However, creditors collectively might be able to get more if they took a coordinated strategy to divide and sell the assets or renegotiate loans and debts.
10. Managing the insolvency process comes at a cost, both to the courts<sup>2</sup> from making bankruptcy and winding up orders and to official receivers from dealing with cases. These costs should normally be covered by creditors who are the direct beneficiaries from the overall coordinated insolvency process, and HM Treasury rules, set out in Managing Public Money, require fees to be set to cover costs.
11. The Service considers that a new financial structure for official receivers is essential to provide greater transparency, reduce the cross subsidy from asset rich cases, provide a greater return to creditors, and to deliver a sustainable funding regime for the future.

### Current position

12. A single official receiver's administration fee and a general "Secretary of State's administration fee" is charged against the realisation of assets in all cases on a sliding scale, based on rates shown in table 2.

**Table 2: Official Receiver administration fees and Secretary of State fee bands charged on asset realisations under the existing fees**

Case type	Administration fee
Debtor petition administration fee	£1,990
Creditor petition administration fee	£1,990
Companies compulsory winding-up administration fee	£2,520

Applicable SoS Fee	Rate of fee
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<sup>2</sup> The cost to the court will be reduced when debtor petitioned become an administrative rather than a court based procedure from April 2016, for full details of the impacts please see <http://www.legislation.gov.uk/ukpga/2013/24/impacts/2013/1058>

First £2,000 (£2,500 company)	0%
Next £1,700	75%
Next £1,500	50%
Next £396,000	15%
Remainder <sup>3</sup>	1%

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<sup>3</sup> Up to a maximum fee of £80,000

13. The Secretary of State fee is misleadingly named because actually the fees relate to the functions of the official receiver; a small amount of money is additionally charged on a banded time and rate basis principally in relation to the costs of distributing assets to creditors, that activity not being covered by the official receiver's administration fee.
14. Income from the Secretary of State's administration fee covers the costs in cases (regardless of the type of case i.e. debtor petition, creditor petition or company petition) where the estate itself is insufficient to pay the administration fee in full. So funds raised from fees levied in cases that are asset rich, subsidise those cases that do not have assets (cases with no assets at all constitute approximately 50% of all cases).
15. The official receiver's administration fee and Secretary of State's administration fee are charged in all cases, irrespective of whether or not an insolvency practitioner is subsequently appointed to realise the assets. This means the level of cross subsidisation can reach as much as £80,000 in asset rich cases. The Service cannot refuse to accept cases where there are no assets, so in many cases the only payment received is via the petition deposit. The level of the Secretary of State's administration fee overall is set so as to cover the shortfall in those cases with insufficient assets to cover the administration costs.
16. Under the current legislation, all petitions for a bankruptcy order, whether or not they are presented by the debtor in person or by a creditor, must be made to the appropriate court with jurisdiction. From April 2016 this will change and applications made by the debtor will no longer be to the court but will instead be to the newly created adjudicator. A fee will be payable by the applicant before making the application; just as any petitioner currently must pay a fee to the court. The adjudicator fee may be pre-paid in instalments.

### **Policy objective**

17. The overall intention of the changes to the fees is to introduce a new fee structure for the work of the official receiver. To do this we wish to charge a suite of different fees which recognise the different functions of the official receiver and are more transparent in terms of the necessary planned managed cross-subsidy and which does not mean that creditors in asset rich cases bear a disproportionate burden for those cases which are asset poor (up to £80,000 can be paid under the current Secretary of State fee).
18. This should ensure the insolvency fee regime is aligned with managing public money principles.

### **Description of options considered (including do nothing)**

19. A number of ways to deal with this complex issue have been considered, taking account of the fundamental principle underpinning Government insolvency policy that the users of the system ought to pay for it, and assessing the options against the degree to which they meet our core objectives.

#### **Option 1: Do nothing**

20. This is not an option that would provide the financial stability needed or a regime that meets Managing Public Money principles. The do nothing option would also result in a predicted operational deficit on official receiver cases of around £9m. Those costs would ultimately be passed to the taxpayer as the deficit would have to be funded from departmental budgets.

#### **Option 2: Full cost recovery by individual case**

21. We have considered whether we could record work done on each case and then charge a fee at the end of the case to cover all the costs incurred. However, we have concluded that this approach would not be deliverable and workable because:
  - a. It would undermine the policy requirement that insolvency is accessible to those who need it;
  - b. It would not offer cost certainty to those accessing insolvency. This uncertainty would likely act as a significant deterrent;
  - c. It could be unfair in its application (for example, where work was undertaken to establish whether there are additional assets and none are found but the applicant has to pay for this);

- d. It would lead to significant instability for the Insolvency Service;
- e. It would not be possible to determine at the outset who would be able to pay and who would not, leading to significant planning difficulties and a potential burden on the taxpayer where funding would be required to plug any shortfalls. This is because there is no link between the cost of a case and the ability of the insolvent to pay and there are very significant problems in collecting additional fees from debtors after they have been declared insolvent (and who by their very nature have few or no funds with which to meet future obligations).

22. We therefore concluded that this approach would not be desirable or workable.

**Option 3: Full payment of the best estimate of the full unit cost of the case up front**

- 23. A key component of the government’s insolvency policy is to ensure that, although the users of the system ought to pay for it, those who need debt relief are not financially excluded and are able to access an appropriate remedy.
- 24. Consequently, whilst this option would meet the objective of being MPM compliant it would undermine the policy objective of accessibility to debt relief because to require payment up front of the entire cost of the case would make bankruptcy too expensive for the vast majority of debtors. We have been told that there are a large number of people who cannot raise the money to cover the petition costs at the current level of the deposit (£525). 50% of cases have no assets with which to pay the costs of the case, and therefore this would mean insolvency would not be accessible to those who most need it.
- 25. Within these constraints the only viable option is to have a fee structure that allows for cross subsidisation, or one where asset rich cases contribute towards the cost of administrating cases with little or no assets.

**Option 4: (the preferred option) A new fee structure that consists of a suite of different fees which recognise the different functions of the official receiver and is more transparent in terms of the necessary planned cross subsidy**

- 26. For each type of insolvency case:
- 27. A primary “official receivers **administration**” fee to cover the duties of the official receiver acting as such, payable in two parts. The first part of the fee is payable up front by the petitioner in the form of a deposit (at a level not so high as to deter access) and refundable (as now) once the costs of the case have been paid.
- 28. The second part or remainder of the fee is payable from the first realisation of assets. Separate fees levels would be set for debtor bankruptcies, creditor bankruptcies and liquidations.
- 29. Following a review of costs, it is proposed that the changes to existing fees will be:

<b>Name of fee</b>	<b>Current fee (£)</b>	<b>Amount from July 2016/17 (£)</b>	<b>Percentage Change (%)</b>
Debtors petition deposit	525	550	4.8
Creditor petition deposit	825	990	20
Companies compulsory winding-up deposit	1,350	1,600	19
Debtor petition administration fee	1,990	1,990	0
Creditor petition administration fee	1,990	2,775	39.4
Companies compulsory winding-up administration fee	2,520	5,000	98.4
Companies wound up in the public interest administration fee	5,000	7,500	50.0

It is proposed to introduce the following new fees to cover existing work of the official receiver:

Name of fee	Amount from July 2016/17 (£)
Official receiver general fee	£6,000
Trustee Liquidator fee	15 per cent of assets realised by the official receiver
Refunding the deposit where a petition is dismissed or withdrawn	£50
Setting up income payment agreements/orders	£150

30. The shortfall that needs to be covered by assets from other cases will constitute an identified amount of cross subsidy<sup>4</sup> and will be clearly identified in advance. It will be a separate additional single fee (an “**official receivers general fee**”) and set at a level which seeks to recover the shortfall from the primary fee. It will be paid for out of the first available assets. The official receiver’s general fee will be set at £6,000 for every bankruptcy and compulsory liquidations. Unlike the previous Secretary of State fee where the amount paid was completely dependent on the total amount of asset realisations, which would only be partially known at the beginning of any case, and also meant that cases with significant assets paid large fees to cover the costs of cases of cases with no assets.
31. A separate trustee/liquidator fee to pay for the costs of asset realisations where the official receiver acts as trustee/liquidator and assets are realised. The fee will be payable out of realisations as a percentage of assets set at a rate of 15% of realisations by the official receiver when acting as trustee or liquidator.
32. These two changes have the effect of reducing the cross subsidisation of asset rich cases because all cases will now only have to pay up £6,000 in general fees to cover the costs of cases which have insufficient assets to cover administration costs. Any higher fees paid will reflect the cost of work by the official receiver in realising assets and will be voluntary as they apply only when the petitioner chooses to ask the Official Receiver to act as office holder. Therefore this approach reduces cross subsidisation under the Managing Public Money principles.

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<sup>4</sup> In accordance with Managing Public Money the cross subsidy is classified as a tax and is accompanied with a S102 order approved by BIS Ministers and HM Treasury. Chapter 6.4.5 - Managing Public Money (2013)



33. The charge on a banded time and rate basis principally in relation to the costs of distributing assets to creditors will continue.
34. Separately, a new fee to cover the costs of setting up an income payments agreement<sup>5</sup> order (set as the best estimate of the full unit cost of undertaking this work). This fee will be £150.
35. For petitions presented to the court in bankruptcy and winding-up which are subsequently dismissed, withdrawn or otherwise not proceeded with, there will be a fee of £50 to cover the costs of administering return of the deposit to the petitioner. This will be deducted from the deposit at the time of the reimbursement.
36. There will also be an increase in administration fees in respect of the winding up cases where the petitioner is the secretary of state to £7,500 i.e. in cases where a company is wound up by the Secretary of State in the public interest. These cases are complex and cost significantly more to administer than “normal” winding up cases. The increase in the administration fee will align the fee more closely with the actual cost. We consider Option 4 to be the most attractive option because:
  - a. It offers a more stable mechanism to collect fees and predict future fee income as the fees will be paid from the first realisation of assets, the majority of which happens in the first year.
  - b. It is, by design, in full compliance with MPM principles, through better matching activities to fees and being clear about the amount of cross subsidy.
  - c. It meets the public policy requirement of ensuring that those who require access to debt relief are not excluded whilst at the same time making sure that the users of the system pay for it.
  - d. Reforms to the way debtors apply for bankruptcy from April 2016 will allow for the deposit to be made by instalments rather than in a lump sum as at present. We will review the take up of this option and assess the effect it might have had on accessibility to see if it provides the opportunity to raise deposit levels without deterring those most in need of the protection afforded by bankruptcy.
37. Implementation date of July 2016.

**Cost and benefits of preferred option**

38. This IA will discuss the impacts on groups including creditors, debtors and the Insolvency Service. Creditors can be quite a wide group including businesses, HMRC, Local Authorities, employees and consumers. Where possible, this IA will describe the impact on different types of creditors. Taxpayers will also be affected by the changes and this impact will be discussed alongside that of the Insolvency Service.
39. Table 3 shows the forecast case load for 2016/17.

**Table 3**

Year	Debtor petitioned bankruptcy	Creditor petitioned bankruptcy	Compulsory company winding ups	Total cases
2016/17	8,000	3,600	2,500	14,100

**Benefits to the Insolvency Service**

40. The change in fee will increase income to the Insolvency Service and help address the predicted operational deficit for official receiver work. Based on the forecasted caseload, the fee changes will increase income by £7.9m as shown in table 4.

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<sup>5</sup> A consequence of the debt relief provided with bankruptcy is that the debtor no longer has to make payments to the majority of his/her creditors, this may result in surplus income available to the debtor beyond that needed to meet the reasonable domestic needs of him/herself and his/her family. Any surplus income payments can then be paid into the bankruptcy estate. An income payment order/agreement pays some of this surplus income in to the bankruptcy estate for up to three years.

**Table 4:** Forecast change in income following the change in fees

Year	Current forecast income (£m)	Forecasted new income following the changes (£m)	Increase in income from the changes (£m)
2016/17	40.11	48.01	7.9

41. The increase in income is a transfer from creditors to the Insolvency Service so the increase in income is also recorded as a cost in this IA. The increase in income will not in itself remove the deficit but alongside additional cost reduction measures aims to eliminate it by 2017/18.
42. In accordance with Managing Public Money<sup>6</sup>, fees and charges are continually reviewed to ensure they accurately reflect the full cost of completing the work.

### Cost to petitioners

43. Petitioners will have to incur higher costs from the increase in deposits to initiate bankruptcy proceeding or to wind up a company. It is possible to estimate the net impact on petitioners from the higher costs by combining the forecasted case load numbers in table 2 with the change in deposit levels for bankruptcy and company compulsory winding up orders. The breakdown of these costs by the type of deposit is shown in Table 5.

**Table 5: Increased cost to petitioners from the change in fees**

Year	Debtors petitioned bankruptcy (£m)	Creditor petitioned bankruptcy (£m)	Compulsory company winding up petitions (£m)	Overall (£m)
2016/17	0.2	0.6	0.6	1.4

44. Petitioning for bankruptcy on their own behalf will cost each petitioner an additional £25 in respect of the deposit. Based on the estimated debtors petitioned case load this equates to an additional cost to debtors of £0.2m. However, new measures coming into force in April 2016 which will enable a debtor to petition for his or her own bankruptcy administratively avoiding court costs and will mean the overall cost of debtors petition bankruptcy for those who would not meet the requirements for remission of court fees is reduced by £25.
45. The deposit in a creditor petitioned case is increasing and will cost creditors an extra £0.6m a year. HMRC is the largest single creditor in many insolvencies, the impact upon this Department is included as part of the costs upon creditors. Around half of creditor petitions are made by HMRC meaning the cost to them will be around £0.3m per year.
46. A company petition can be initiated by creditors, directors or the company itself so the extra cost of the petition will be shared amongst these petitioners. Creditors account for the majority of other petitions with companies and directors on their own account, accounting for less than 5 per cent. As for creditor bankruptcy petitions, HMRC accounts for around half of all winding up petitions meaning the cost to them will be around £0.3m.
47. The total cost across all types of petitioners has been estimated to be £1.4m.
48. In a minority of cases there are sufficient assets in the case to cover the costs of administering the case. When this happens the deposit is refunded to the petitioner so it is not a true reflection of the additional costs of petitioning for bankruptcy and winding up a company.
49. Not all petitions become cases; some are dismissed or withdrawn after the initial receipt of the deposit. There is a cost associated with doing work on cases that are ultimately dismissed, and this has been estimated at around £50 a case. When the dismissal is granted the deposit is returned to the petitioner and the dismissal fee will be deducted from the refund. The number of cases dismissed each year has been estimated at around 5,500. This means the total cost to petitioners as a result of the introduction of the dismissal fee is £0.2m.

<sup>6</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/454191/Managing\\_Public\\_Money\\_AA\\_v2\\_-\\_jan15.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/454191/Managing_Public_Money_AA_v2_-_jan15.pdf)

## Costs to the Insolvency Service

50. The changes to the administration and deposit fees and the introduction of new fees will require a small I.T project to ensure the Insolvency Service can collect the revenue. It has been estimated that the one off cost will be less than £0.01m. This will be paid out of existing business as usual I.T spending so will not generate an additional cost to the public.

## Cost to creditors

51. A small part of the increased income available to the Insolvency Service will be the result of increased fees to creditors for setting up an income payment arrangement/order. Such arrangements are only made where there is sufficient surplus income following debt relief to contribute to the bankruptcy estate. The fee will be paid from assets in the estate. Only a minority of bankruptcy cases have either an IPO or an IPA and we estimate that based on current caseload forecasts that around 2,000 cases will pay the set up £150 fee. The total cost to creditors has been estimated to be around £0.3m per year.
52. Table 4 showed the total increase in income from the changes to official receiver fees. How these costs are estimated varies according to the type of fee. Table 5 estimated the share of the total costs that is derived from the increased costs to petitioners. The costs associated with the new dismissed petition fee and IPO/IPA arrangement fee are shown in paragraph 49 and 51 respectively. The remaining increase in income will come from the administration fee, the new trustee liquidator fee and official receivers general fee. The levels of income raised from these fees depend on asset realisations from cases. To estimate the amount of income we have analysed the level of asset realisations in insolvency cases in 2011/12, 2012/13 and 2013/14.
53. Based on this analysis we found that the increase in the creditor petition administration fee will raise an additional £1.3m. The increase in the compulsory winding-up administration fee will raise an additional £0.7m and the official receiver general fee will raise an additional £3.1m. The amount of income that is raised from the trustee liquidator fee will depend on the number of cases where the official receiver acts as the trustee liquidator. Using the same data source we estimated that this will happen in around 20 per cent of debtors cases, 12 per cent of creditor petitions and 16 per cent of company cases, analysing the asset realisation from these cases and applying the 15 per cent trustee estimated £0.9m of additional income will be derived from the trustee liquidator fee.
54. The breakdown of the increased income is shown in table 6.

**Table 6: Breakdown of the additional income from new Official Receiver fees in 2016/17**

Name of Fee	Amount of higher fee income raised
Debtors petition deposit	0.2
Creditor petition deposit	0.6
Companies compulsory winding-up deposit	0.6
Debtor petition administration fee <sup>7</sup>	0
Creditor petition administration fee	1.3
Companies compulsory winding-up administration fee	0.7
Official Receivers General Fee	3.1
Trustee Liquidator fee	0.9
Refunding the deposit where a petition is dismissed or withdrawn	0.2
Setting up income payment agreements/orders	0.3
<b>Total<sup>8</sup></b>	<b>7.9</b>

<sup>7</sup> The Debtor petition administration fee remains unchanged so none of the increased income is attributable to this fee

<sup>8</sup> The components may not sum to the total due to rounding

## **Small and Micro Business assessment**

55. The Better Regulation Framework requires consideration of an exemption to all new regulations for small and micro business because of the often disproportionate impact on these types of business of new regulation. This assessment will describe the impact on small and micro business creditors and insolvency practitioners from this change in fees and deposits.

### **Business Creditors**

56. The impact assessment estimated the increased costs of petitioning at around £1.4m in year 1. The IA showed that over half of this cost will be incurred by large public bodies such as HMRC and Local Government. Large businesses, banks and debt recovery agencies will incur a significant amount of the remaining costs to creditors from petitioning (between a sixth and quarter) meaning small and micro business creditors are only likely to incur a relatively small share of the additional costs of petitioning.
57. Table 6 showed that the majority of the remaining £8.4m in increased income comes from asset realisations in administration, general and trustee liquidator fees. The overall intention is to reduce the reliance on asset rich cases subsidising asset poor cases. Estimating this effect on small and micro businesses is difficult as the distribution of funds to creditors follows a prioritisation set out in statute. The groups include secured creditors (often banks), preferential creditors such as former employees, floating charge holders (again usually banks) and unsecured creditors including HMRC and other businesses. The benefits to asset rich cases from not having to pay large SOS fees are likely to be greater for creditors that are higher up the prioritisation scale. Secured creditors and floating charge holders are often large businesses. Small and micro business creditors are therefore likely to receive a small share of the benefits of the lower SOS fee in asset rich cases.
58. As expected, asset poor cases tend to have little or no distribution to creditors. While the new fee structure will raise higher fees from these cases the effect on small and micro business creditors is likely to be minimal for the same reasons as the above. The costs are likely to fall on those creditors higher up the order of priority, which tend to be larger businesses.
59. Therefore we can provisionally conclude that small and micro business creditors are likely to incur costs that are at most proportional to their share of likely returns and so not disproportionate impacted by the fee changes.

### **Insolvency Practitioners**

60. R3, the Association of Business Recovery Professionals which represents 97% of IPs, estimate that 46% of its members can be classified as micro and small businesses. The fee changes are unlikely to affect insolvency case numbers, therefore no significant impacts are expected on insolvency practitioners in small and micro businesses.
61. In addition, insolvency practitioners have a choice about which insolvency cases they take on and tend to administer those cases where there are sufficient assets to meet costs. Any familiarisation and implementation costs for insolvency practitioners would be negligible and would be absorbed through existing guidance arrangements, training programmes and continuing professional development.
62. The measures are not expected to have any other impacts on equality, competition, families or the justice system other than those described above.

## **Risks and assumptions**

63. One of the reasons for the fee increase is to remove the predicted deficit in official receiver work. This should be achieved in 2016/17 with current projected caseload forecasts and planned efficiencies. If the caseload is significantly different to the level predicted the deficit may not be removed or a surplus may ensue. To mitigate this risk, forecasts are regularly reviewed and quality assured by an external panel of experts which includes debt advisors, creditors, insolvency practitioners and debt charities. Forecasting caseload beyond this period is very difficult because they rely on forecasted levels of interest rates, debt levels, GDP as well as assumptions on the effects of other changes that have been made to the bankruptcy process, including allowing for online petitioning for debtors. Also the peak in case load was an effect of the last recession and the downward trend since then partly a result of an improving economic environment, there is likely to be natural plateau for bankruptcy levels in England and Wales, so assuming the existing trend would continue is an unrealistic assumption of the likely impacts. Therefore we have used the most reliable single year forecast and projected the figure out for the remaining period of the appraisal. Even so there is a risk that caseload forecasts will differ from forecasted levels. In accordance with managing public money principles fees are reviewed regularly to ensure they cover costs.
64. The increases planned for company and creditor petition levels are significant. In the past when smaller increases have occurred there has been no evidence of a relationship between deposit levels and case numbers. However the larger increases that will now be occurring may mean it is too costly for some people to petition. This would reduce case numbers to below forecast levels, reducing income and potentially preventing the removal of the deficit in official receivers. This risk is being mitigated by engaging with key stakeholder prior to the fee changes, to establish the impact on petition levels.

#### **Business Impact Target status**

65. The changes to some of the fees and charges will directly impact on businesses who petition to wind up other companies and petition for personal bankruptcy. The changes to fees and deposits are not the result of any change in regulatory scope. The work completed by the Official Receiver will be the same and businesses will not see any difference in regulation. The changes will make the costs to insolvent estates more transparent. The increases are needed because of lower case numbers leading to higher fixed costs per case and to reduce the reliance on asset rich cases cross subsidising asset poor cases and so bring the official receiver funding regime in to line with managing public money principles. The introduction of new fees does not represent an extension of regulatory powers and merely makes existing costs and activities more transparent by charging a specific fee which reflects the costs of completing the work. In accordance with better regulation guidance the fee changes are out of scope of the business impact target but the EANCB score for validation is the additional income raised from the fees and charges that will be paid by business or lost to business in higher asset realisations minus the increased income raised from the official receivers general fee which is classified as a tax under managing public money principles.
66. Based on table 6 this equates to £7.9m minus the cost of £3.1m of general fee, minus the cost of the debtor petition fee income £0.2m because this is not paid by businesses. After removing the additional £0.6m cost of HMRC petitions based on paragraph 45 and 46 this leaves approximately £4.0m. The remaining fees and charges mostly relate to asset realisations, following an analysis of the returns to creditors around 90 per cent of this cost will be incurred by business with the remaining amount incurred by other creditors such as government.
67. Therefore the EANCB is £3.4m in 2014 prices and 2015 base year.

## Annex

This annex contains a number of scenarios showing the fees for some types of cases under the existing funding regime and the one proposed in option 4. These are indicative scenarios and assume all other costs remain equal. They are not a good reflection of the level of distribution to creditors for cases with assets of the level quoted because they do not include other costs of the insolvency procedure such as legal costs or banking fees. These costs were excluded to simplify presentation and because they should be unaffected by the change in fees.

### Scenario 1: Debtor petition without assets in estate, administered by an Official Receiver

Category	Fee structure 2015/16	Fee structure 2016/17 (option 4)	Change in estate assets against previous fees
Debtor's deposit (insufficient assets to refund)	525	550	-25
Assets available in estate (A)	0	0	0
Administration fee (B)	0	0	0
SOS fee	0	0	0
Official receiver general fee (C)	0	0	0
Trustee fee (D)	n/a	0	0
IPO/IPA arrangement fee (E)	n/a	0	0
Insolvency Practitioner fees (F)	n/a	0	0
Net Assets (A-B-C-D-E-F)	0	0	0

In scenario 1, the debtor petitioning for their bankruptcy would be required to find an additional £25. In this example there are no assets in the estate and so have no other impacts. Debtor petitioned bankruptcy with zero or insufficient assets to cover the costs of administering the case are very common and represent over 50 per cent of debtor petition cases.

### Scenario 2: Debtor with assets and sufficient income to pay into an IPA, case is administered by an official receiver

Category	Fee structure 2015/16	Fee structure 2016/17	Change in estate assets against previous fees
Debtor's deposit (sufficient assets to be refunded)	525	550	0 <sup>9</sup>
Assets available in estate	15,000	15,000	0

<sup>9</sup> The assets in this scenario are sufficient to cover the administration costs so the total petition would be refunded to petitioner, meaning the change in estate assets from the petition costs would be zero.

(A)			
Administration fee (B)	1,990	1,990	0
SOS fee	3,495	0	3,495
Official receiver general fee (C)	0	6,000	-6,000
Trustee fee (D)	n/a	1,052	1,052
IPO/IPA arrangement fee (E)	n/a	150	-150
Insolvency Practitioner fees (F)	n/a	n/a	0
Net Assets (A-B-C-D-E-F)	9,515	5,809	-3,707

In scenario 2, the debtor petition bankruptcy is administered by the official receiver and has sufficient assets to cover the costs of the case administration. Under the new fee structure assets in the estate would pay a trustee fee to the Insolvency Service of £1,052. In this hypothetical scenario the debtor would qualify for an income payment agreement and so the estate is also charged the cost (£150) of creating this agreement. The case would also pay a £6,000 general fee in contrast to previous Secretary of State fee which would be around £3,707.

### Scenario 3: A creditor petition administered by an insolvency practitioner

Category	Fee structure 2015/16	Fee structure 2016/17	Change in estate assets against previous fees
Petitioning creditor deposit (sufficient assets to be refunded)	825	990	0 <sup>10</sup>
Assets available in estate (A)	15,000	15,000	0
Administration fee (B)	1,990	2,775	-785
SOS fee	3,495	0	3,495
Official receiver general fee (C)	0	6,000	-6,000
Trustee fee (D)	n/a	0	0
IPO/IPA arrangement fee (E)	n/a	0	0
Insolvency Practitioner Estimated fees (F)	5,000-7,000 <sup>11</sup>	5,000-7,000	0
Net Assets (A-B-C-D-E-F)	2,515 – 4,515	0 – 1,225	-3,290

<sup>10</sup> *ibid*

<sup>11</sup> The figures for the IP fees have been estimated after reviewing cases administered by an IP with similar assets levels. A range is quoted because the level of fees charged will reflect work completed not necessarily the value of the asset realised.

In scenario 3, the creditor petition administered by an Insolvency Practitioner and would pay a higher administration fee. The case would not pay a trustee fee to the Insolvency Service because those functions would be provided by the IP. It is difficult to estimate the level of fees that an IP would charge in these cases and the estimate presented is an indicative fee based on an analysis of IP administered creditor petitioned bankruptcies.

#### Scenario 4: A creditor petition administered by an official receiver

Category	Fee structure 2015/16	Fee structure 2016/17	Change in estate assets against previous fees
Petitioning creditor deposit (sufficient assets to be refunded)	825	990	0 <sup>12</sup>
Assets available in estate (A)	15,000	15,000	0
Administration fee (B)	1,990	2,775	-785
SOS fee	3,495	0	3,495
Official receiver general fee (C)	0	6,000	-6,000
Trustee fee (D)	n/a	934	-934
IPO/IPA arrangement fee (E)	n/a	0	0
Insolvency Practitioner fees (F)	n/a	n/a	0
Net Assets (A-B-C-D-E-F)	9,515	5,291	-4,224

In scenario 4, the creditor petition administered by an official receiver would pay a higher administration. The case would pay the maximum £6,000 general fee and a trustee fee of £934. The fees collected under the 2016/17 fee structure would be £4,224 higher than in 2015/16.

#### Scenario 5: A company liquidation case with assets administered by an insolvency practitioner

Category	Fee structure 2015/16	Fee structure 2016/17	Change in estate assets against previous fees
Petitioning creditor deposit (sufficient assets to be refunded)	1,325	1,600	0 <sup>13</sup>
Assets available in estate (A)	15,000	15,000	0
Administration fee (B)	2,400	5,000	-2,600
SOS fee	3,420	0	3,420
Official receiver general	0	6,000	-6,000

<sup>12</sup> The assets in this scenario are sufficient to cover the administration costs so the total petition would be refunded to petitioner, meaning the change in estate assets from the petition costs would be zero.

<sup>13</sup> The assets in this scenario are sufficient to cover the administration costs so the total petition would be refunded to petitioner, meaning the change in estate assets from the petition costs would be zero.



fee (C)			
Trustee fee (D)	n/a	0	0
IPO/IPA arrangement fee (E)	n/a	n/a	0
Insolvency Practitioner fees (F)	5,000 – 7,000	5,000 – 7,000	0
Net Assets (A-B-C-D-E-F)	2,180 – 4,180	0	-2,180 <sup>14</sup>

In scenario 5, the company liquidation case is administered by an insolvency practitioner and has sufficient assets to pay the administration and general fee. Under this scenario the higher fees would account for all the assets in the estate.

### Scenario 6: A company liquidation case with assets administered by an official receiver

Category	Fee structure 2015/16	Fee structure 2016/17	Change in estate assets against previous fees
Petitioning creditor deposit (sufficient assets to be refunded)	1,350	1,600	0 <sup>15</sup>
Assets available in estate (A)	15,000	15,000	0
Administration fee (B)	2,400	5,000	-2,600
SOS fee	3,420	0	3,420
Official receiver general fee (C)	0	6,000	-6,000
Trustee fee (D)	n/a	2,250	-2,250
IPO/IPA arrangement fee (E)	n/a	n/a	0
Insolvency Practitioner fees (F)	n/a	n/a	0
Net Assets (A-B-C-D-E-F)	4,180	3,400	-2,580

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<sup>15</sup> ibid