

<b>Title: The Insolvency Rules 2016</b> <b>IA No: BISINSS15004</b>  <b>Lead department or agency:</b> Insolvency Service (Exec Agency of BIS) <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>		
	<b>Date: 22/02/16</b>		
	<b>Stage: Final</b>		
	<b>Source of intervention: Domestic</b>		
	<b>Type of measure: Primary legislation</b>		
<b>Contact for enquiries:</b> David Miller 020 7637 6445			
<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
59.95	50.81	-5.7	Yes <b>OUT</b>

**What is the problem under consideration? Why is government intervention necessary?**  
 Occasionally the original rationale behind any legislation may not continue to apply. Changes in business practices, technology and other legislation can mean that they are no longer relevant. Since their introduction in 1986 the Insolvency Rules have had numerous amendments which have resulted in them being described as an “impenetrable thicket”. Government intervention is necessary to prevent this regulatory failure. As the Insolvency Rules are legislation the only means of changing them are via new legislation.

**What are the policy objectives and the intended effects?**  
 The objective of the policy is to recast and restate the 1986 Rules, which have been amended over 20 times since their implementation. They will implement improvements to the efficiency of the insolvency framework allowing for more modern business practices such as the provision of electronic communications, and reduce the costs of insolvency proceedings. This should enable creditors to receive higher returns in the form of dividends.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**  
 Do nothing: The insolvency framework will continue to be one of best in the world according to the World Bank Doing Business rankings but we would fail to take the opportunity to improve the framework for all stakeholders.  
 Option 1: a complete rewrite of the Insolvency Rules which will consolidate the existing rules and their amendments into a single set of rules. Modernise and simplify the language and incorporate various changes in the law which are intended to reduce the burden on business of insolvency procedures and increase returns to creditors.  
 Alternatives to regulation are not possible in this instance as the changes can only be made via legislation.

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

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

**Signed by the responsible Minister:** Margot James **Date:** 18 October 2016

# Summary: Analysis & Evidence

Description: The Insolvency Rules 2016

## FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2016	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 58.14	High: 61.84	Best Estimate: 59.95

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	31.5	0	31.5
High	31.5	0	31.5
Best Estimate	31.5	0	31.5

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

Direct one off familiarisation and training cost for IPs and their practices - £19.46m  
 Direct one off cost to insolvency practices and regulatory compliance firms from changing, processes, guidance material and templates - £12m

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

There are no non monetised costs with these proposals.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	10.6	89.6
High	0	11.0	93.3
Best Estimate	0	10.8	91.4

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

Efficiency improvements from more transparent, consistent and easier to use rules, saving time for insolvency staff involved in administrative roles - an ongoing benefit commencing in year 2 of £2.67m  
 Changes to the requirements on producing progress reports following block transfers will reduce costs to IP practices by around £0.48m  
 Reduced costs for those office holders who sought sanction from the courts to put documents on line of around £0.91m  
 Reduced costs from postage and printing by greater use of electronic communications increasing from £2.64m in year 1 to £8.09m in year 10.  
 Removal of a requirement to maintain time records in voluntary arrangements where remuneration is not on a time cost basis of around £1.06m.  
 Analysis of data from Companies House estimates that around 90 percent of these benefits accrue to business.

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

There no non monetised benefits from these proposals.

### Key assumptions/sensitivities/risks

Discount rate (%) 3.5

Impacts have assumed a certain levels of insolvency cases, if cases are very different to forecast then benefits will also change.  
 The Insolvency Rules are a large piece of legislation that will be used by office holders and interpreted by the courts. It is possible that one or more of the new Rules may be interpreted differently than intended which may result in unforeseen consequences for parties impacted by insolvency. To mitigate against this risk the Rules have undergone extensive consultation and are reviewed by an independent panel of experts.

### BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 3.5	Benefits: 9.2	Net: 5.7	Yes	Out

## **Background and problem under consideration**

- 1.1 The Insolvency Act 1986 and a number of supplementary pieces of primary and secondary legislation form the basis of the statutory framework which governs the way in which insolvency proceedings are dealt with. The framework sets out matters of legal effect which deal with, amongst other things, the rights of the various parties affected by insolvency; the powers of individuals administering an insolvency; and detailed procedural rules for insolvency processes.
- 1.2 One piece of secondary legislation that accompanies the Insolvency Act - the Insolvency Rules 1986 (the Rules) - contains the procedural framework for insolvency processes included within the Insolvency Act 1986. Since the Rules were first made in 1986 there have been over 20 separate amendments to the Rules and this led to them being criticised in the House of Lords as an “impenetrable thicket”. A complete review of the Rules is long overdue and is needed to improve, modernise and consolidate them.
- 1.3 The Rules cover all types of insolvency proceedings including: bankruptcy, Individual Voluntary Arrangement (‘IVAs’), liquidation (both voluntary winding up (CVL) and winding up by the court (CWU)), administration and Company Voluntary Arrangement (‘CVAs’). Annex A provides an explanation of the main insolvency procedures. The first two referred to above are insolvency procedures that deal with individuals whereas the others relate to companies.
- 1.4 Generally an individual or a company will enter an insolvency procedure when they are unable to pay their debts as they fall due. The route into insolvency will depend on the particular procedure and the circumstances of the debtor or the company, but may include a creditor petitioning the court in what may be regarded as a hostile action or a non-court based voluntary decision by the insolvent individual or company (‘the debtor’) to seek the relief from indebtedness that insolvency proceedings offer.
- 1.5 In all formal insolvency procedures, an insolvency office-holder will be appointed to deal with the insolvent’s estate (their financial affairs), including assessing whether or not there are any assets belonging to the debtor that can be realised. Funds raised from the sale of the debtor’s assets are used to pay for the proceedings, including the office-holder’s fees for acting in the case, and any remaining funds are distributed to creditors. The legal framework sets out the order of priority in which creditors receive payment.
- 1.6 Insolvency office-holders must be qualified to act as such. This means they will either be authorised insolvency practitioners (‘IPs’)<sup>1</sup> (private sector professionals) or official receivers (‘ORs’) (employed by the Insolvency Service and who can only act in bankruptcies and court windings up). Other than where an OR is office-holder, creditors fix the basis by which an office-holder is paid. In most cases dealt with by IPs,

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<sup>1</sup> There are 7 Recognised Professional Bodies, recognised by the Secretary of State for the purposes of authorising members to act as insolvency practitioners.

the office-holder's remuneration will be charged to the estate on a time costs basis and so the IP's fees will be determined by the amount of time they spend dealing with the case. In cases dealt with by ORs, a fixed case administration fee will be charged to the estate<sup>2</sup> and other fees calculated as a % of assets realised or time spent in making distributions to creditors may also be charged.

- 1.7 IPs are highly qualified professionals and charge fees at rates similar to other professionals such as accountants and lawyers (which they may also be qualified as). In 2013 the Insolvency Service published a report on the fees charged by IPs undertaken by Professor Elaine Kempson of Bristol University.<sup>3</sup> The hourly charge-out rates for different categories of IP staff (including IPs themselves) used in this IA are based on the average figures contained in Professor Kempson's report.
- 1.8 Office-holders derive their powers from the Act and follow the procedural rules set out in secondary legislation. They owe duties to various interested parties, particularly creditors, the exact nature of which depends on the particular procedure.
- 1.9 When acting as an insolvency office-holder, an IP does not act in a traditional way characteristic of other relationships in which a member of a profession provides professional services to a client. This can be observed in the differences between the two main types of work undertaken by IPs: pre-insolvency advice and formal insolvency appointments. This IA relates to legislative changes purely related to an IP's role in formal insolvency appointments.
- 1.10 When an IP consents to act as the office-holder in a formal insolvency, they are fulfilling the role of office-holder, and in so doing, must act in accordance with the strict framework mandated by insolvency legislation. The role of the office-holder in a formal insolvency may be viewed as analogous to a trustee in that they deal with the insolvent company or individual's property for the benefit of others. They act as a conduit to facilitate the transfer of company/individual's property to their creditors.

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<sup>2</sup> The current case administration fee for bankruptcy is £1,850 and for compulsory liquidation is £2,400.

<sup>3</sup> See <http://www.bristol.ac.uk/geography/research/pfrc/themes/credit-debt/pfrc1316.pdf>

1.11 Whilst creditors are the main beneficiaries, IPs as insolvency office-holders do not work for creditors, illustrated by the fact there is no contractual relationship between the two parties. It is perhaps more illuminating to view the position using the analogy of executors to a will. As executors act on the behalf of the deceased's estate, in a similar fashion office-holders act on behalf of the insolvent company/individual's estate. Reducing the regulatory burden in this context results in a direct benefit to creditors through lower fees charged by IPs for statutory work.

### **Policy Objective**

- 1.12 The objective of the policy is to recast and restate the 1986 rules, which have been amended over 20 times since their implementation. They will implement improvements to the efficiency of the insolvency framework including provisions in the Deregulation and Small Business, Enterprise and Employment Acts, by removing/revising regulations that add unnecessary costs to insolvency proceedings.
- 1.13 They will allow for more modern business practices such as the provision of electronic communications and by reducing the costs of insolvency proceedings should enable creditors to receive higher returns in the form of dividends.

### **Economic Rationale for Intervention**

- 1.14 Occasionally the original rationale behind any regulation may not continue to apply in light of changes to the business environment. This may be because of changes in the insolvency regime; other legislation changes; technological developments; and developments in business custom and practice. Despite this fact IPs must continue to comply with such regulations as they are mandatory requirements. Removing unnecessary regulations will free up economic resources for more productive uses and increases returns to creditors.
- 1.15 Regulations that are no longer fit for purpose add additional barriers and costs to insolvency proceedings and government intervention is necessary to correct these regulatory failures.

### **Consultation process**

1.16 A public consultation which was held between 26 September 2013 and 24 January 2014<sup>4</sup>. We targeted IPs, repeat creditors from the business community, directors and individuals. In the consultation we set out the background and rationale for individual measures and invited stakeholders to comment. We also included in the consultation document impact assessments that set out likely costs and benefits for those proposals where we were able to do so. This gave respondents the ability to analyse the methodology used and consider the accuracy of any assumptions we had relied upon and gave them the opportunity to provide further information to enable us to quantify the likely costs and savings as accurately as possible. There was a strong emphasis in the consultation

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<sup>4</sup> <https://www.gov.uk/government/consultations/modernisation-of-the-rules-relating-to-insolvency-law>

questions asking stakeholders to estimate costs and savings based on their experience of insolvency processes.

- 1.17 We received 37 individual responses from a range of stakeholders including: IPs and IP firms; the professional bodies that authorise IPs; the insolvency trade body R3; business trade associations, insolvency lawyers and public bodies. These responses were analysed and used to refine proposals, including those which form the subject of this IA.
- 1.18 In some cases, as policy underwent refinement, measures changed in form after the date of the consultation and this necessitated further engagement with stakeholders, including with regards to efforts to accurately quantify the costs and savings.
- 1.19 As drafting of the new Rules progressed, a programme of stakeholder engagement was undertaken between July 2014 and June 2015. A number of meetings were held with informed stakeholders (drawn from those who had replied to the formal consultation). Work-in-progress drafting was shared and discussed with the group, allowing it to be refined following its comments. The group was also used as a sounding board for possible policy changes that could be incorporated within the rules, in particular stakeholders suggested the improvements to the timing of progress reports.

## **Description of Options Considered and Dismissed (including do nothing option)**

### **Do nothing**

- 1.20 The current insolvency framework compares favourably with those of other countries, and is consistently ranked highly<sup>5</sup> by the World Bank for speed of resolution of corporate insolvencies and the amount of monies returned to creditors.
- 1.21 IPs are highly qualified individuals who must pass rigorous exams and meet additional suitability criteria before they can be authorised to act as office holders. Doing nothing will maintain the current highly regarded insolvency framework but would miss an opportunity to introduce changes that reflect current business practices, technological changes and general improvements in the legislation.

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<sup>5</sup> The World Bank currently ranks the UK insolvency regime in the top 10 in the world for returning money to creditors.

## **Preferred Option**

- 1.22 The complete rewrite of the Insolvency Rules involves changes that broadly fall into one of three categories. One is to consolidate the existing rules and their amendments into a single set of rules. The second is to modernise and simplify the language. The third is to incorporate various changes in the law which are intended to reduce the burden on business of insolvency procedures and increase returns to creditors. To the extent that the Rules are consolidated and recast they are not intended to change the law, and we expect that there will be limited impacts on business.
- 1.23 This IA will describe the impact of the measures which will reduce the burden on business.
- 1.24 Following further conversations with stakeholders over the impacts of Rules, we've identified three areas other than those previously described for the Small Business, Enterprise and Employment Act 2015<sup>6</sup>, which will have an impact on business, these being:
- A. Changes to when progress reports are required in a case
  - B. Removal of the requirement to maintain time records in Voluntary Arrangements where remuneration is not a on time-cost basis
  - C. Removing barriers to the usage of e-communications and websites
- 1.25 This IA will estimate the impact of each of the policy interventions against an option of no change for each of these rules. Any costs from the measures will also be estimated.
- 1.26 The other minor technical changes to the rules have been assessed as being very difficult to quantify and unlikely to deliver sizeable benefits. Therefore it has been deemed disproportionate to estimate them.
- 1.27 A non-regulatory option is not possible in this instance as legislation needs to be amended to enable the changes to be made and the benefits realised.

## **Cost and benefits of preferred option**

### **Costs of preferred option**

- 1.28 Insolvency practitioners will need to familiarise themselves with the new rules to ensure they are compliant with them in their business activity. In calculating these familiarisation costs we have assumed that all appointment-taking IPs will need to undertake such an exercise, as will their staff, split into insolvency managers (senior members of staff dealing with complex tasks and responsible for supervising junior staff) and insolvency assistants (junior members of staff dealing with less complex, mostly administrative matters).

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<sup>6</sup> A copy of the impact assessment for the measures is available via the following link.  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/368336/bis\\_14\\_935\\_proposed\\_changes\\_to\\_the\\_law\\_governing\\_insolvency\\_proceedings\\_v2.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/368336/bis_14_935_proposed_changes_to_the_law_governing_insolvency_proceedings_v2.pdf)

- 1.29 R3 estimate that around 12,000 people<sup>7</sup> are employed in the insolvency profession including 1,359 appointment taking IPs<sup>8</sup>. Based on this information the Insolvency Service has assumed that there are on average around two insolvency managers per appointment-taking IP. To make up the approximately 12,000 employees the remaining staff would be junior assistants.
- 1.30 Hourly rates of pay for each type of employee were estimated in a 2013 report on IP fees published by Professor Elaine Kempson<sup>9</sup>, for this impact assessment the hourly rates of pay have been updated to 2014 prices using the GDP deflator.
- 1.31 The changes to the Rules that were enabled via the Small Business, Enterprise and Employment Act 2015 estimated that the familiarisation time for 7 policies was around 4 hours for IPs and insolvency managers and 2 hours for assistants. Following further consultation with the industry it is estimated that entire package of rules changes would take around a 2 days familiarisation time for IPs and managers and 1 day for assistants.
- 1.32 The policy changes listed in the Deregulation Act IA would account for a quarter of the familiarisation time with the measures listed in this IA accounted for the remaining time.
- 1.33 Using these estimates table 1 shows the total one-off familiarisation costs to be around £19.46m. This cost to business of a regulatory change is within scope of the business impact target.

**Table 1: Estimated familiarisation costs for Insolvency Professionals**

	<b>Number</b>	<b>Hourly rate £ (2014 prices)</b>	<b>Familiarisation time (hours)</b>	<b>Cost £m</b>
<b>Insolvency Practitioner</b>	1,359	378	12	6.16
<b>Insolvency Manager</b>	2,718	253	12	8.25
<b>Assistants</b>	7,923	106	6	5.04
			<b>Total</b>	<b>19.46</b>

<sup>7</sup> Why Insolvency Matters (2015) available via the following link [https://www.r3.org.uk/media/documents/about\\_us/insolvency\\_industry/R3%20Value%20of%20Profession.pdf](https://www.r3.org.uk/media/documents/about_us/insolvency_industry/R3%20Value%20of%20Profession.pdf)

<sup>8</sup> As of 1 January 2015

<sup>9</sup> Available via the following link. <http://www.bristol.ac.uk/media-library/sites/geography/migrated/documents/pfrc1316.pdf>



1.34 In addition to training staff and familiarisation businesses will incur significant one off costs from the changes to the Rules. Many documents and reference materials will require updating and reviewing to ensure compliance. Also staff will need to understand how the Rules will work in their business. Estimates provided by the industry have told us this could take several months of work time to complete. The few large businesses in the sector will have the available expertise and economies of scale to complete the work in house. While many of the smaller practices rely on compliance businesses to produce these materials and adapt them to their own businesses. Following consultation with IPs the cost to large practices and compliance firms, which together count for around 20 businesses will be around £0.1m per business. Smaller practices, of which it is estimated that there are around 1,000, will incur a much lower cost of adapting material provided by compliance firms to their own businesses. Information received from smaller practices estimated this cost to be around £0.01m per business. **Together this makes an estimated total one off cost to businesses of around £12m. This is a direct cost to business from the changes in regulation and is within scope of the business impact target and will be incurred in year 1.**

#### **Benefits of preferred option**

- 1.35 The consultation on the first draft of the Rules asked respondents if it felt that new rules would be less confusing and easier to use. Regulations that make improvements to comprehension should be reduce time when applying them, lowering costs and enabling more money to be returned to creditors. Evidence from the consultation supports this view with the majority feeling the rules will be easier to follow, more consistent and less confusing.
- 1.36 To accurately estimate this benefit we would need to compare cases before and after the rules changes but as this is not possible ex ante we have cautiously assumed that each insolvency should be able to save 15 minutes due to the improvements. This estimate was produced following discussion with the industry, who on the whole felt this was a reasonable estimate. It is difficult to know which type of insolvency employee would benefit the most from these improvements so a weighted average of the hourly rates from table 1 of £170 per hour has been estimated to represent the industry.

**Table 2: Benefit to creditors from lower administration costs of insolvency cases**

<b>Cases Type</b>	<b>Number</b>	<b>Saving £m</b>
Administration	1,406	0.06
CVL	9,981	0.42
CVA	357	0.02
MVL	7,837	0.33
IVA	39,993	1.70
Bankruptcy(IP)	1,883	0.08

CWU(IP)	649	0.03
Para 83 CVL	631	0.03
<b>Total</b>		<b>2.67</b>
<b>Total benefit to business within scope of Business Impact Target (90% of total)</b>		<b>2.45</b>

- 1.37 Table 2 shows the total annual ongoing benefit is estimated to be around £2.67m and is broken down by case type. A proportion of this benefit to creditors is within scope of the Business Impact Target as IPs would pass on the saving in higher distributions to business creditors.
- 1.38 To estimate the share attributed to business creditors we completed an analysis of a random unweighted sample of 125 records filed at Companies House over a 3-year period and a OFT market study<sup>10</sup> of IPs estimated that non-businesses accounted for around 10 per cent of the returns to creditors. Therefore it is estimated that there will be a £2.45m annual benefit to business from improvements in language, consistency and ease of comprehension.
- 1.39 Before these benefits are realised there is likely to be a transition period where workers adapt to the new practices and ways of working. After discussion with the industry we believe this benefit will only start to be realised in year 2.

### **Timing of progress reporting with block transfers**

- 1.40 The 2016 Rules will make a number of changes to the reporting requirements on insolvency cases. Under the existing Rules IPs are required to complete a progress report every 6 months (for administration cases) and 12 (for all other cases). They are also required to produce a report if there is a change of office-holder, often where an IP retires or otherwise leaves a firm. Such changes are often part of what is known as a 'block transfer' – where an IP is office-holder in a number of cases and will be replaced in all of them by another IP. This is a court-based process governed by the Rules.

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<sup>10</sup> The market for corporate insolvency practitioners (June 2010)  
[http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.of.gov.uk/shared\\_of/reports/Insolvency/oft1245](http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.of.gov.uk/shared_of/reports/Insolvency/oft1245)

- 1.41 Following a change in office the 6 or 12-month reporting period is broken and starts again afresh. For example currently if a liquidator (12-month reporting cycle) left office 7 months after the preceding progress report, he/she would produce a progress report upon leaving office. His/her successor would produce the next report 12 months later. This can cause practical problems for an IP following a block transfer, as all the transferred cases' reporting requirements will come due on the same day 6 or 12 months later. IPs have told us that this can lead to additional costs of completing cases in order to deal with the peak work load
- 1.42 The new rules will have a fixed reporting requirement for each case, which will remain the same regardless of whether or not a case was transferred. The changes will shift when progress reports are required and disconnect the reporting requirements from block transfers so overall it is not expected that the changes will result in any reduction in the overall number of progress reports produced in any case. However, the changes will have an important impact on IP firms by reducing the cost to IP firms of having multiple cases requiring updates at similar times.
- 1.43 With a fixed progress reporting cycle IP firms should be able to reduce the cost of the insolvency procedure in these cases. On average around 2 – 3 IPs transfer cases every month generally due to retirement or IPs moving firms with the transfer covering on average around 20 – 30 cases. Over the course of a year this equates to between 240 – 360 cases a year being affected.
- 1.44 Following discussion with industry experts they have estimated that following the changes there will be an average saving of between £1,000 to £2,000 per case, primarily from lower overtime payments and a reduced need to hire temporary staff.
- 1.45 **This average benefit per case means a gross benefit to creditors from these changes of between £0.24 and £0.72m of which between £0.22 and £0.65m will be a benefit to business that is in scope of the business impact target. The mid point will be taken as the best estimate, £0.43m.**

#### **Removing barriers to the usage of e-communications and websites**

- 1.46 The Rules were created before the widespread usage of electronic communications became a common business practice. Some of the amendments to the Rules have attempted to promote the usage of electronic communications between office-holders and creditors with some success. Despite these efforts some barriers still exist and the new rules will make further changes in an attempt to promote the use of electronic communications and the usage of websites.

- 1.47 Currently insolvency office-holders can obtain a court order to permit them to upload all future documents (after an initial notice to creditors telling them of the fact) that the law requires them to send to creditors onto a website. The cost of making this application will be acting as a barrier to using e-communications and the new rules will dispense with the need to get a court order in these circumstances. Creditors will still be able to request hard copies of documents to be sent to them, as they can at present.
- 1.48 The cost of making a court application has been estimated by leading members of the judiciary and IPs to be around £4,000. This high cost has led to very few cases doing this and means IP firms have not been able to realise the savings from the reduced cost of disseminating information via electronic methods. Lowering the costs of disseminating information via printing forms and postage should increase the money available to return to creditors.
- 1.49 The benefit of this policy change will derive from two aspects. Firstly those office-holders that apply to the court to place all documents online will no longer incur the cost of the application. Secondly the removal of court costs will encourage more businesses to place documents online saving money on printing and postage when contacting creditors which in some insolvency cases can be a large cost of the insolvency proceeding. For ease of understanding each of these benefits will be estimated in turn.
- 1.50 At the moment the number of cases that place documents online after obtaining a court order is very low, we estimate that around 1 per cent of cases make use of it at the moment. Under the Rules each of these cases will no longer incur the £4,000 cost. Table 3 shows the estimated benefit to creditors from IP firms no longer needing to make court applications to place documents online.

**Table 3: Estimated benefit to cases that currently apply to the court to allow documents to be placed online**

<b>Insolvency Case Type</b>	<b>Case numbers currently applying to court to place documents online</b>	<b>Benefit to creditors (case number multiplied by £4,000 cost of court application)<sup>11</sup> (£m)</b>	<b>Benefits to business (£m)</b>
Administration	14	0.06	0.05
CVL	100	0.40	0.36
CVA	4	0.01	0.01
MVL	78	0.31	0.28
Bankruptcy (IP)	19	0.08	0.07
CWU (IP)	6	0.03	0.02

<sup>11</sup> Calculations are based on unrounded numbers so may not sum to the amount shown in the table

Para 83 CVL	6	0.03	0.02
<b>Total</b>	<b>227</b>	<b>0.91</b>	<b>0.82</b>

1.51 Table 5 shows that there are an estimated 752 cases a year which currently obtains a court order to put documents online. Each of these will save an estimated £4,000, giving a total ongoing benefit to creditors of around £0.91m of which £0.82m will benefit business creditors and be in scope of the business impact target.

1.52 Cases may not place documents online due to the up front cost of applying to court. It is difficult to estimate this potential growth rate in usage, as past experience tells us some industries are quick to adopt these facilities while others take longer to realise the gains. However, stakeholders have told us that some businesses already have the infrastructure and that others will be early adopters of the change, meaning that there may a significant increase in cases that place all documents online in the first few years after implementation. To account for this we estimate that after two years 25 per cent will be saving money on postage and printing via using things such as electronic portals. After this period it is assumed that there will be a relatively modest growth rate in cases making greater use of electronic communications of around 5 per cent per year.

1.53 All of these cases will now benefit from lower costs of printing and postage, the cost of which can vary considerable in insolvency cases. After examining receipts and payments accounts filed at Companies House for a number of different insolvency procedures it is estimated that IP firms may be able to save on average around £500 per case. This money would instead be available for distribution to creditors.

1.54 Table 4 shows a breakdown of the benefit to creditors over 10 years, based on the number of cases using websites increasing to 25 per cent in the first two years post implementation and then growing by 5 per cent per year and each case saving £500.

**Table 6: Estimated benefit to creditors from reduced postage and printing costs through the increased use of electronic communications**

<b>Year</b>	<b>Case numbers using website to disseminate information to creditors</b>	<b>Benefit to creditor (based on a saving of £500 per case)</b>	<b>Benefit to business</b>
1	5,290	2.64	2.38
2	10,881	5.44	4.90
3	11,437	5.72	5.15
4	12,020	6.01	5.41
5	12,632	6.32	5.68

6	13,275	6.64	5.97
7	13,950	6.98	6.28
8	14,659	7.33	6.60
9	15,404	7.70	6.93
10	16,185	8.09	7.28

1.55 **The direct benefits to creditors from the increasing use of electronic communications will deliver £2.64m of saving in year 1 increasing to £8.09m at the end of the appraisal period. Benefits to business creditors account for around 90 per cent of this benefit and as a direct benefit of this deregulation is in scope of the business impact target.**

### **Removal of a requirement to maintain time records in Voluntary Arrangements where remuneration is not on a time cost basis**

- 1.56 The new Rules will remove the automatic requirement for IPs to maintain time records in all cases and restrict that requirement to those cases where the IP is seeking any part of the remuneration on a time cost basis.
- 1.57 The current regulatory requirement to maintain time cost records in voluntary arrangements is an unnecessary administrative burden, with no benefit to creditors. IPs tend to receive remuneration from individual voluntary arrangements on percentage of assets or fixed fee basis and so these cases are likely to have a reduced administration cost due to the removal the requirement to maintain time cost records.
- 1.58 Based on evidence provided for the consultation impact assessment<sup>12</sup> the level of protocol compliant IVAs was estimated by industry experts to be around 71 per cent of IVAs. In 2015 there were 39,993 IVAs meaning around 28,395 would be protocol compliant.
- 1.59 An estimate of £50 per case was assumed at the consultation stage by stakeholders and this remains the best available estimate of the cost to administrative staff for completing these records.
- 1.60 However, after discussions with IPs the majority felt they would cease to maintain such records in IVAs, if no longer required to do so. A minority said they would maintain the records for internal work monitoring purposes. Therefore we have assumed that around 75 per cent of protocol compliant cases (21,296) will make the £50 saving while the remainder will still incur the cost.
- 1.61 This means the annual benefit from the removal of this regulation will be around £1.06m of which **around £0.96m is in scope of the Business Impact Target.**

<sup>12</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/244904/rtc-consultation.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/244904/rtc-consultation.pdf)

## **Risks**

- 1.62 The benefits to business are based on forecasts of case loads and assumptions on behaviour post implementation. If either of these differs significantly from the number presented in this impact assessment benefits will be affected.
- 1.63 As a significant change in legislation there is a risk that one or more of the Rules changes may be interpreted differently in practice to the intention when they were created. This could have unforeseen consequences on businesses, employees, and other parties impacted by insolvency. To mitigate against this the Rules have undergone an extensive consultation and have been reviewed by an independent panel of experts.

## **Direct costs and benefits to business calculations (following BIT methodology)**

- 1.64 The changes listed in this IA will reduce the cost of insolvency procedures. Creditors will directly benefit through lower fees charged by office holders. The proportion of creditors that are businesses would fall within scope of the business impact target. The estimated impacts on business that are within scope are listed below:
- One-off familiarisation and training costs for insolvency staff - £19.46m
  - One-off transition cost of updating materials, templates and business practices - £12m
  - Benefit to creditors from lower administration costs of insolvency cases - £2.45m
  - Efficiency improvements from changes to the reporting cycle and block transfers - £0.43m
  - Benefit to business creditors in cases where they currently apply to the court to allow documents to go online - £0.82m
  - Benefit from using electronic communications and reduced cost of printing and postage - £2.38m (in year 1 increasing over 10 years see table 4)
  - Removal of a requirement to maintain time records in voluntary arrangements where remuneration is not on a time cost basis - £0.96m
- 1.65 The changes combined result in a deregulation to business and an EANCB score of around -£5.7m (2014 prices).

## **Other impacts**

- 1.66 The Rules changes have been assessed as having no other impacts on competition, equality, families and the justice system other than those listed in this impact assessment.

## **Annex A**

### **Glossary of insolvency procedures**

#### **Administration**

Administration is a process which places a company under the control of a licensed insolvency practitioner and the protection of the court to achieve a specified statutory purpose. The purpose of administration is to save the company, or if that is not possible, to achieve a better result for creditors than in a liquidation, or if neither of those is possible, to realise property to enable funds to be distributed to secured or preferential creditors.

#### **Administrative Receivership**

Administrative receivership is the term applied when a person is appointed as an administrative receiver. An administrative receiver is a licensed insolvency practitioner appointed by the holder of a floating charge covering the whole, or substantially the whole, of a company's property. He can carry on the company's business and sell the business and other assets comprised in the charge to repay the secured and preferential creditors.

#### **Bankruptcy**

A bankruptcy order made against an individual signifies that the individual is unable to pay his/her debts and deprives him/her of his/her property, which is then realised for distribution amongst his creditors.

#### **Company Voluntary Arrangement**

A company voluntary arrangement is a procedure whereby a plan of reorganisation or composition in satisfaction of its debts is put forward to the company's creditors and shareholders who vote whether or not to approve it. There is limited involvement by the court and the arrangement, once approved, is controlled by a licensed insolvency practitioner who acts as supervisor.

#### **Compulsory Liquidation**



A compulsory liquidation of a company is a liquidation ordered by the court. This is usually as a result of a petition presented to the court by a creditor and is the only method by which a creditor can bring about a liquidation of a company it is owed money by.

### **Debt Relief Order**

A process which provides an individual with debt relief, subject to some restrictions. They are suitable for people who do not own their own home, have little surplus income and assets and less than £20,000 of debt. An order lasts for 12 months. In that time creditors named on the order cannot take any action to recover their money without permission from the court. At the end of the period, if the individual's circumstances have not changed they are freed from the debts that were included in the order. DROs do not involve the courts but are run by the Insolvency Service in partnership with debt advisers who provide assistance to those applying for DROs.

### **Individual Voluntary Arrangement**

A voluntary arrangement for an individual is a procedure whereby a scheme of arrangement of his affairs or composition in satisfaction of his debts is put forward to creditors for approval. If approved, an insolvency practitioner acts as supervisor of the arrangement.

### **Voluntary Liquidation**

Can be either a Creditors' Voluntary Liquidation or a Members' Voluntary Liquidation. A creditors voluntary liquidation relates to an insolvent company. It is commenced by resolution of the shareholders, but is under the effective control of creditors, who can choose the liquidator. A members' voluntary liquidation is a solvent liquidation where the shareholders appoint the liquidator to realise the assets and settle all the company's debts, plus interest, in full within 12 months