

<b>Title:</b> Fees for registration of powers of attorney  <b>IA No:</b> MoJ006/2017 <b>RPC Reference No:</b> N/A <b>Lead department or agency:</b> Ministry of Justice  <b>Other departments or agencies:</b> Office of the Public Guardian	<b>Impact assessment (IA)</b>		
	<b>Date:</b> 20/02/2017		
	<b>Stage:</b> Final		
	<b>Source of intervention:</b> Domestic		
	<b>Type of measure:</b> Secondary Legislation		
<b>Contact for enquiries:</b> joan.goulbourn@justice.gsi.gov.uk			
<b>Summary: Intervention and Options</b>		<b>RPC Opinion:</b> N/A	

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, Three-Out?	Measure qualifies as
-£0.1m	N/A	N/A	Not in scope	N/A

**What is the problem under consideration? Why is government intervention necessary?**  
 Due to the large volume of applications to register powers of attorney, the Office of the Public Guardian (OPG) is currently receiving more income through registration fees than the cost of the service. Government intervention is necessary to set a new fee to rectify the situation.

**What are the policy objectives and the intended effects?**  
 The policy objective is to use the powers contained in the Anti-social Behaviour, Crime and Policing Bill 2014 (ABCPA) to introduce an enhanced fee for powers of attorney. The enhanced would cover the cost of the service, including the cost of remissions and exemptions. The intended effect of the policy is to reduce the level of over-recovery to within the bounds of the enhanced fee power.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option.**  
 The following options are considered:

- Option 0: Do Nothing. Maintain the current fee structure
- Option 1: Introduce enhanced charging for powers of attorney which recovers the cost of the services, including remission and exemptions and lower the registration fee to £82 and the resubmission fee to £41

The Government's preferred option is to implement Option 1 as this best meets the policy objective.

<b>Will the policy be reviewed? It will be reviewed. 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>		<b>Non-traded:</b>
			N/A		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:** Phillip Lee

**Date:** 24<sup>th</sup> February 2017

# Summary: Analysis and Evidence

# Policy Option 1

**Description:** Widen the scope for which OPG enhanced fees can be utilised and lower the registration fee to £82 and the resubmission fee to £41.

<b>Price Base Year:</b> 2017/18	<b>PV Base Year:</b> 2017/18	<b>Time Period Years:</b> 10	<b>Net Benefit (Present Value (PV)) (£m) -£0.1m</b>		
			<b>Low:</b>	<b>High:</b>	<b>Best Estimate:</b>

<b>COSTS (£m)</b>	<b>Total Transition (Constant Price)</b>	<b>Years</b>	<b>Average Annual (excl. Transition) (Constant Price)</b>	<b>Total Cost (Present Value)</b>
Low		1	£15m	£133m
High			£17m	£150m
<b>Best Estimate</b>	<b>£0.1m</b>		<b>£16m</b>	<b>£140m</b>

**Description and scale of key monetised costs by ‘main affected groups’**

The transitional costs to the OPG from (making minor adjustments to IT systems and reissuing forms and guidance), are expected to be up to £0.1m.

The ongoing cost to MoJ from lowering the fees is estimated to be around an average of £16m per year (annual average in 2017/18 prices).

**Other key non-monetised costs by ‘main affected groups’**

There may be some familiarisation costs for users both customers and legal professionals and OPG staff reacting to any reduced fee. These costs cannot be monetised, and are expected to be minimal.

<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price)</b>	<b>Years</b>	<b>Average Annual (excl. Transition) (Constant Price)</b>	<b>Total Benefit (Present Value)</b>
Low	0	1	£15m	£133m
High	0		£17m	£150m
<b>Best Estimate</b>	<b>0</b>		<b>£16m</b>	<b>£140m</b>

**Description and scale of key monetised benefits by ‘main affected groups’**

On an on-going basis, OPG users would benefit from the lower fees by around £16m per annum (annual average in 2017/18 prices).

**Other key non-monetised benefits by ‘main affected groups’**

None

**Key assumptions/sensitivities/risks**

It has been assumed that fee changes will not lead to an increase in applications.

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

# Evidence Base

## A. Background

1. The Mental Capacity Act 2005 (“MCA 2005”) provides a statutory framework to empower and protect people who may lack capacity to make some decisions for themselves. The Act created the Public Guardian to ensure that those appointed to take decisions on behalf of those who lack capacity discharge their duties properly, without abuse, and act in the best interests of the person without capacity.
2. The Public Guardian does this through the Office of the Public Guardian (OPG). The OPG performs this function by registering Lasting Powers of Attorney (LPA) and Enduring Powers of Attorney (EPA) supervising Deputies appointed by the Court of Protection, and investigating the ways Attorneys and Deputies exercise their powers.
3. An LPA is a deed which can be made by anyone over the age of 18 (the ‘Donor’) who has the capacity to do so. It allows the Donor to appoint someone to look after their affairs (referred to below as an ‘Attorney’) should they lose the capacity to make decisions themselves. There are two types of LPAs: Property and Financial Affairs, and Health and Welfare. They can be made independently and the donor does not have to make both. LPAs replaced enduring powers of attorney (EPAs), but EPAs made under the previous legislation (the Enduring Powers of Attorney Act 1985) remain valid and may be registered.
4. Because not all applications to register an LPA are successful, a resubmission fee was introduced in 2011. This fee, set at a lower level than the initial registration fee, is chargeable each time an LPA is resubmitted to the OPG within 3 months of it being returned to the Applicant as invalid. This involves having to return a replacement instrument with a pro-forma sheet, allowing the OPG to rely on recorded information from the original application and identify the documents as a resubmission.
5. OPG fees are prescribed by the Lord Chancellor under powers in section 58(4) of the Mental Capacity Act 2005 which may, by virtue of provision in section 180 of the Antisocial Behaviour, Crime and Policing Act 2014 (ABCPA), be used to prescribe an enhanced fee. The current fee structure is £110 to register a power of attorney (LPA or EPA) and £55 for the resubmission fee. The remissions system of full or partial fee waivers ensures that access to OPG services is maintained for those individuals on lower incomes who would otherwise have difficulty paying a fee to use OPG services.
6. Due to the increased volume of power of attorney applications received in recent years, the OPG finds itself in a state of over-recovery which goes against the principles in Managing Public Money (MPM), and is currently receiving more income through registration fees than the cost of the service. The OPG cannot over-recover without Parliamentary authority (which could be conferred by use of the power to prescribe an enhanced fee).
7. The OPG have re-assessed fee levels for both the power of attorney registration fee and the re-submission fee needed to cover the cost of the service, including the cost of remissions and exemptions. The new proposed fee structure is £82 to register a power of attorney (LPA or EPA) and £41 for the resubmission fee. As the fees cover the cost of remissions and exemption, it would be classified as an enhanced fee.

## B. Policy Rationale and Objective

8. There is a need to ensure that the services of the OPG are adequately resourced in such a way that they are protected while the costs to the taxpayer are reduced. The policy aim is therefore, to charge enhanced fees so that users who can afford to, make a greater contribution towards the overall costs of OPG. In addition, the Ministry of Justice (MoJ) aims to ensure that, as the OPG transforms its services, it should be able to deliver more than just its core functions of registering powers of attorney and supervising deputies.
9. The ABCPA 2014 provides the Lord Chancellor with a specific power to prescribe fees which exceed cost (‘enhanced fees’) so as to ensure that the OPG is adequately funded. Specific enhanced fees must be introduced via a Statutory Instrument that is subject to the affirmative resolution procedure

(except where fee increases simply reflect changes in the value of money, in which case negative resolution procedure applies).

10. The objective of the policy is to ensure the OPG fee regime operates within the bounds of the powers to charge fees for OPG services. The Lord Chancellor's powers will be used to introduce enhanced fees for the registration and resubmission of powers of attorney. The fee regime will be re-assessed so that the level of fee income allows the OPG to cover the cost of the service including remissions and exemptions as well as enabling the OPG to be more flexible and responsive in setting fees.

## C. Description of Options Considered

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

- **Option 0: Do nothing. Maintain the current fee structure of OPG fees.**
- **Option 1: Introduce enhanced fees for registration of powers of attorney whilst lowering the registration fee to £82 and the resubmission fee to £41.**

### *Option 0*

12. Under the Do Nothing option the current fee structure of £110 to register a power of attorney and £55 for a repeat application would remain in place. Due to the volumes of power of attorney applications received, the OPG finds itself in a state of over-recovery which goes against the principles in Managing Public Money (MPM). In steady state we estimate that the current fee structure would generate around £70m per year (this excludes any income from supervision fees).

### *Option 1*

13. Under this option, enhanced fees for power of attorney applications would be introduced, to cover the cost of OPG services (including the costs of remissions and exemptions). The fee charged for powers of attorney applications would decrease from £110 to £82 and the fee charged for repeat LPA applications (resubmissions) would decrease from £55 to £41.
14. Due to year on year increases in volumes, it is difficult to set a steady fee and it is likely that the OPG will continue to over-recover. The ABCPA provides the OPG with the power, subject to Parliamentary agreement, to charge an enhanced fee which covers costs and allows surplus income to be utilised towards cross subsidising other OPG services such as exemptions and remissions rather than all exemptions and remissions being funded by general taxpayers (via a financial transfer to the OPG from the MoJ). It will still be necessary to review the fee on an annual basis due to the anticipated volumes.
15. As Option 0 is not a viable option, as it is not compliant with MPM rules, the Government's preferred approach is to implement option 1 as it meets the policy objectives.

## D. Affected Stakeholder Groups, Organisations and Sectors

16. These reforms would primarily affect users who apply for a PoA. A list of all the main groups that would be affected is shown below:
  - OPG users – those who make power of attorney applications;
  - OPG – who operate the power of attorney registration service;
  - MoJ – who sponsor the OPG
  - Legal and financial services providers – who provide power of attorney related services.

## **E. Cost and Benefit Analysis**

17. This Impact Assessment (IA) identifies both monetised and non-monetised impacts on individuals, groups and businesses in the UK, with the aim of understanding what the overall impact on society might be from implementing the two options. The costs and benefits of proposal 1 are compared to Option 0, the Do Nothing case, where fees are maintained at their current level. As the Do Nothing option is compared to itself, the costs and benefits are necessarily zero as is its Net Present Value (NPV).

### **Key Assumptions**

#### *Methodology*

18. To estimate the change in fee income, we have used OPG internal caseload data for powers of attorney, which includes a 10 year forecast of expected volumes. These caseload forecasts are based on estimates of the power of attorney market which incorporate ONS population forecasts. We have also modelled an upper and lower scenario to account for uncertainty in caseload forecasts.

19. The proposed lower fee of £82 was then multiplied by the number of expected non remitted applications to calculate the new expected income to the OPG. The same approach was used to calculate expected resubmission fee income. Throughout this IA, we have presented the average annual costs and benefits over a 10 year period.

#### *Demand*

20. The main driver of demand for powers of attorney is the diagnosis of ill health conditions, with age, financial status and public awareness of powers of attorney also playing a part. We think it is unlikely that user demand will change in response to any changes in registration fees. This is consistent with behaviours witnessed in October 2013 when the registration fee was reduced by £20 and also because a power of attorney is an essential document to authorise one individual to act on behalf of another. For instance, in cases where an individual is diagnosed with Alzheimer's, it would be preferable for that individual to make a power of attorney whilst they still have the capacity to do so. Failure to register a power of attorney has the potential to cost far more in terms of both time and money.

21. Nonetheless, to account for uncertainty in demand, our sensitivity analysis considers the impact of a higher and lower caseload forecast. This is explored in the risks and sensitivity section below.

#### *Remissions*

22. The current remissions scheme will remain in place and that eligibility for fee remissions is unchanged. Therefore, our modelling assumes the planned fee changes will not impact on those who are already entitled to a full fee remission (e.g. individuals in receipt of particular benefits). We also assume the proportion of applicants getting a remission remains constant.

#### *Net Present Value*

23. The NPV is calculated over a ten-year period, under the assumption that the proposed fees do not increase in line with inflation. Fees are not included in the overall NPV as they represent a transfer payment between the individuals who register for a power of attorney and the OPG.

### **Option 1: Introduce enhanced fees lower the LPA fee to £82 and the resubmission fee to £41.**

## **Costs of Option 1**

### Transitional costs

#### *OPG*

24. OPG expect to incur costs of approximately £0.1m for changes to OPG publications and amendments to IT systems. There may also be costs related to OPG staff having to familiarise themselves with the new fees.

#### *OPG users and legal services providers*

25. Familiarisation and awareness costs might also be incurred by OPG users and legal services providers resulting from the change of fee. These costs cannot be monetised and are expected to be minimal.

### Ongoing costs

#### *MoJ*

26. As a result of the proposed changes, we estimate that the MoJ would face a loss in income of £16m per annum (average over the ten year appraisal period and in 2017/18 prices). The lost income is a result of lowering the LPA application fee (from £110 to £82) and the resubmission fee (from £55 to £41).

## **Benefits of Option 1**

### Transitional benefits

27. No transitional benefits expected.

### Ongoing benefits

#### *Users of the OPG*

28. As a result of the lower fees, we estimate that OPG users that apply for a power of attorney will benefit by around £16m per annum (average over the ten year appraisal period and in 2017/18 prices).

## **Net impact of Option 1**

29. The OPG is expected to incur transition costs from the fee regime change estimated to be around £0.1m. Individuals and legal and financial service providers who provide power of attorney related services are also expected to incur negligible costs from familiarising themselves with the new fee structure.

30. On an ongoing basis the change in fees regime is expected to result in a loss on fee income of around £16m per year. This cost to MoJ will be offset by the benefit to OPG users, the ongoing net impact of the proposal is expected to be minimal.

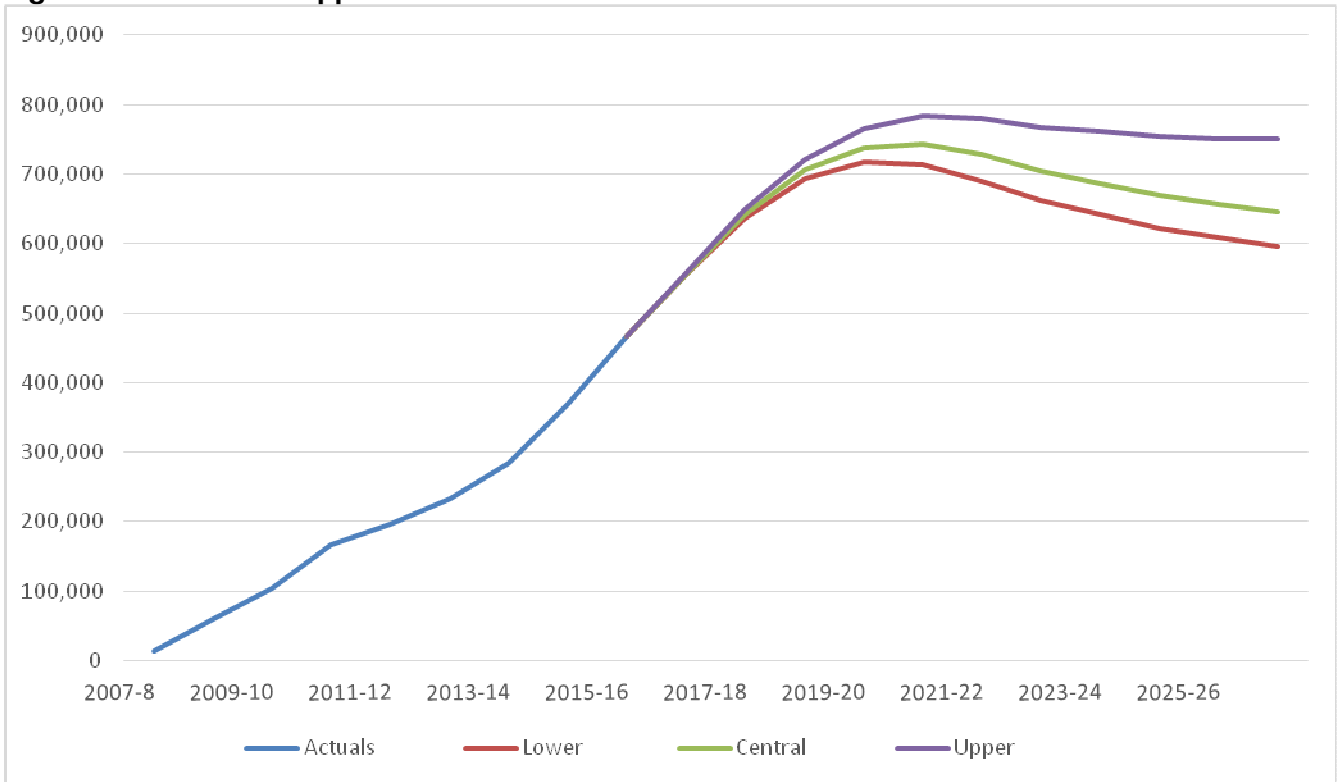
## **F. Risks and sensitivity analysis**

### *Volumes*

31. As stated in paragraph 22 it is unlikely that user demand will change in response to a lower power of attorney fee; however, to account for any unexpected risks and to factor in uncertainty around long

term forecasting, we have modelled an upper and lower volume scenarios, as seen in the chart below.

**Figure 1: Forecast of applications**



32. Under the 'upper' scenario in Figure 1, the number of applications increases at a faster rate compared to the central estimate, with the volume of applications entering a 'steady state' by 2020-21. This is in contrast with the other two forecasts, which estimate a downward trend in yearly applications from their peak around 2020-21. Our best estimate is that despite the change in fees, volumes are expected to follow the trend shown in the central estimate.
33. This sensitivity analysis section assume that the resubmission volumes follow a similar trend to the central estimate shown in chart 1 above.
34. The transitional costs are not impacted by the uncertainty in caseload forecast. Therefore this sensitivity only focusses on the ongoing costs of changes in fee income to MoJ and the offsetting benefit to OPG users.

	Caseload Scenarios		
	Low	Central	High
Average Annual Costs	£15m	£16m	£17m
Average Annual Benefits	£15m	£16m	£17m
<b>Annual Net impact</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>

35. The average annual cost and benefits ranges from £15m to £17m when using low and high caseload forecasts respectively. The ongoing net impact of reduced fee income remains zero as the cost to MoJ is offset by the benefit to OPG users.

*Push back effect*

36. There is also a possibility of a 'push back' effect, where people may choose to delay their application and wait for the lower fee. The impact of this would be a drop in demand just before the fees are implemented and then a subsequent spike in application after. As the main driver of demand for

powers of attorney is the diagnosis of ill health conditions, however, it would suggest the fee does not play a major part in people's decision to apply. Therefore, any impact on income from this push back effect is not expected to be substantial.

## **G. Enforcement and Implementation**

37. All fees are payable in advance of the service being provided. The sanction for non-payment is that the service, where appropriate, will not be provided and the power of attorney registration would not be permitted to proceed. This would continue to apply under the options being considered.

## **H. Monitoring and Evaluation**

38. The OPG continuously monitors the impact of all fee changes in terms of the impact on power of attorney application volumes.

## **I. Business Impact Target and One-In Three-Out**

39. This measure is a statutory exclusion under s22 of the Small Business, Enterprise and Employment Act 2015. It is not a regulatory provision and does not score against the business impact target or qualify against the One-In Three-Out regulatory burden reduction incentive.