

<b>Title: Increase in fee paid by Recognised Professional Bodies</b>  <b>IA No:</b> BISINSS15001  <b>Lead department or agency:</b> BIS  <b>Other departments or agencies:</b> Insolvency Service	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 26/09/15		
	<b>Stage:</b> Final		
	<b>Source of intervention:</b> Domestic		
	<b>Type of measure:</b> Secondary legislation		
	<b>Contact for enquiries:</b> David Miller 0207 637 6445		

<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> n/a
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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
£0m	-£0.77m	£0.09m	No	n/a

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

Insolvency Practitioners hold a position of trust relative to creditors, debtors and the employees of the insolvent. They have a wide range of powers and have to balance the use of those powers with regard to their impact on various stakeholders. This market power could potentially be abused and create inefficiencies in the market. Regulation of IPs is needed to counter this incentive.

Currently the self regulation of the market is provided by Recognised Professional Bodies (RPBs) with oversight from the Insolvency Service. Oversight is essential to ensure a consistent approach to regulation of IPs. The costs of providing this oversight regulation exceed the current fee income raised from RPBs.

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

The aim of these fee changes is to provide funds for new regulatory responsibilities and powers granted under the Small Business, Enterprise and Employment Act.

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

- Do nothing:** The cost of providing oversight regulation will remain below the revenue received from fees, incurring an additional cost on the tax payer. Each RPB is currently required to pay £300 per IP.
- Option 1:** Increase the fee paid by RPBs to £360 per IP regulated. Increase the fee for applying to become a RPB to £12,000.

**Will the policy be reviewed?** It will be reviewed. **If applicable, set review date:** 04/2016

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	<b>Large</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> 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

Anna Soubry

Date: 7th Dec 2015

# Summary: Analysis & Evidence

# Policy Option 1

## Description:

### FULL ECONOMIC ASSESSMENT

Price Base Year 2015	PV Base Year 2015	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	0	0.1	0.8
High	0	0.1	0.8
Best Estimate	0	0.1	0.8

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

RPBs will incur an additional cost of £0.09m per year to gain oversight regulation from the Insolvency Service. The burden of paying the additional fee will be paid by each RPB in proportion to the number of IPs they regulate. Each RPB may choose to pass on this cost to IPs in the form of higher membership fees.

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

There are no non monetised costs

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	0.1	0.8
High	0	0.1	0.8
Best Estimate	0	0.1	0.8

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

The Insolvency Service will gain the extra revenue £0.09m it requires to use new regulatory powers provided for in the Small Business, Enterprise and Employment Act.

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

There are no non monetised benefits

#### Key assumptions/sensitivities/risks

There are no risks associated with the change in fees to Recognised Professional Bodies

Discount rate (%)

3.5

### BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: £0.1m	Benefits: £0m	Net: -£0.1m	No	n/a

## Background and problem under consideration;

- 1.1 Insolvency Practitioners (IPs) are licensed individuals, the vast majority from accounting or legal backgrounds, they administer personal and corporate insolvencies; for example, acting as administrators, liquidators, supervisors of voluntary arrangements, and trustees in bankruptcy (among other roles).
- 1.2 The current regulatory system has evolved, in part, to address the fact that IPs hold a position of trust as regards creditors, debtors and the employees of the insolvent. They have a wide range of powers and have to balance the use of those powers with regard to their impact on various stakeholders. The decisions they take can have significant consequences for creditors and debtors. The regulatory system needs to be strong enough to ensure that this position of trust is not abused by IPs or the bodies which regulate them, and in cases where it is, to ensure appropriate action is taken.
- 1.3 Underpinning the regulation of IPs in Great Britain is the dual regulatory approach, combining both self-regulation by the profession and independent oversight regulation by the Government. In practice, the Insolvency Service carries out oversight regulation acting on behalf of the Secretary of State.
- 1.4 Self-regulation is carried out by the Recognised Professional Bodies (RPBs) that authorise IPs, these are the:
  - Association of Chartered Certified Accountants (ACCA);
  - Insolvency Practitioners Association (IPA);
  - Institute of Chartered Accountants in England and Wales (ICAEW);
  - Institute of Chartered Accountants in Ireland (CAI);
  - Institute of Chartered Accountants of Scotland (ICAS);
  - Solicitors Regulation Authority (SRA, formerly the Law Society)<sup>1</sup>; and
  - Law Society of Scotland (LSS)<sup>1</sup>
- 1.5 Each RPB must have rules for ensuring that the IPs which it authorises are acting properly. Each RPB has committed to having proper procedures in place to ensure that complaints against the IPs it authorises are investigated. The court has an important role in insolvency proceedings and is the appropriate forum for resolving commercial disputes and matters set out in the insolvency legislation. Complaints procedures are therefore designed to deal with matters such as unprofessional, improper and unethical behaviour.
- 1.6 A memorandum of understanding (MoU) exists between the Secretary of State and the RPBs<sup>2</sup> which sets out an agreed set of principles for the purposes of achieving consistency in the authorisation and regulation of IPs. These principles include the granting and maintenance of authorisations, ethics and professional standards, the handling of complaints, retention of records, and the disclosure of information to other RPBs and the Secretary of State. The Secretary of State is committed to abiding by these principles and each RPB is monitored by the oversight regulator for adherence to these principles.
- 1.7 The Secretary of State, acting through the Insolvency Service, is and will remain responsible for oversight regulation (i.e. regulating the regulators). In practice, these functions are carried out by IP Regulation Section (IPRS) and this remit includes:
  - monitoring the regulatory activities of the RPBs to ensure that they are undertaken in accordance with common standards (as set out in the MoU);
  - developing regulatory policy and professional standards;

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<sup>1</sup> The Solicitors Regulation Authority and the Law Society of Scotland have announced that they will cease the regulation of Insolvency Practitioners by the end of 2015, so will not have to pay the new fee levels.

<sup>2</sup> <http://www.bis.gov.uk/insolvency/insolvency-profession/Professional%20conduct/memos-of-understanding>

- providing guidance to the insolvency profession on law and practice; and
  - monitoring the effectiveness of the relevant legislation.
- 1.8 Regulation of the insolvency profession is intended to be funded by the profession itself, in line with Government policy. Our general approach to oversight regulation reflects the principles set out in the Regulators' Code<sup>3</sup>. One of the key principles of the Code is proportionality.
- 1.9 Currently the Insolvency Service charges a fee to the RPBs each year, set by Statutory Instrument. The charge is based solely on a "per-IP charge" – currently £300. RPBs are required each year to provide the Insolvency Service with the number of IPs they currently have as members and this figure is used to apportion the levy between them.
- 1.10 The number of IPs and which RPB is responsible for regulating them is shown in Table 1.

**Table 1**

	ICAEW	ACCA	IPA	LS	LSS	CAI	ICAS	SoS <sup>4</sup>	Totals
<b>Total number of IPs 1<sup>st</sup> January 2015</b>	724	151	556	129	6	47	89	43	1,745
<b>Of which number of appointment takers</b>	577	137	458	22	1	42	82	40	1,359

- 1.11 Following a review of activities and costs of IP oversight regulation it has been established that the money raised via the current fees is insufficient to meet costs. The review concluded that revenue raised does not adequately cover new costs arising from regulatory responsibilities provided for in the Small Business, Enterprise and Employment Act 2015. In addition the current fees were set in April 2009, with no inflationary increase having been charged since then.

### Policy Objective

- 1.12 The aim of these fee changes is to produce a regulatory funding model for the Insolvency Service which better reflects the costs of providing oversight regulation of RPBs.

### Economic Rationale for Intervention

- 1.13 Insolvency Practitioners hold a position of trust as regards creditors, debtors and the employees of the insolvent. They have a wide range of powers and have to balance the use of those powers with regard to their impact on various stakeholders. The decisions they take can have significant consequences for creditors and debtors. This market power could potentially be abused and create inefficiencies in the market. Regulation of IPs is needed to counter this incentive.

### Policy Options

- 1.14 Do nothing. The costs of oversight of the regulation of IPs will not be fully met from the fees charged to regulators, leading to a requirement for public monies to be used. .
- 1.15 Option 1: **Increase the fee paid by Recognised Professional Bodies to £360 per IP.**
- Other fee changes

<sup>3</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/300126/14-705-regulators-code.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf)

<sup>4</sup> The Secretary of State, although not strictly an RPB, also currently authorises a small number of IPs directly although this will have been brought to an end through the Deregulation Act and IPs will no longer be allowed to be authorised by the SoS after October 2016.

1.16 Organisations that wish to become Recognised Professional Bodies are required to pay a fee of £4,500. The fee covers the cost of processing the application and ensuring that they meet the regulatory requirements before they are able to regulate IPs. Following a review of the cost of making an application the fee will increase from 2016 to **£12,000**. No new bodies have applied to become RPBs since the fee of £4,500 was set in 2004 and the Insolvency Service does not expect any new organisations to apply so the impact on business will be zero.

### Cost and benefits of preferred option (Option 1)

1.17 **Recognised Professional Bodies** Recognised professional bodies are required to pay the costs of providing oversight regulation to the Insolvency Service. As the changes are relatively simple and do not affect means of payment, frequency or work that the RPBs must complete, it is estimated that there will be no costs to RPBs from familiarisation with these regulatory changes. This view has been corroborated by RPBs when they were informed about the changes.

1.18 It is possible to do a static analysis of the costs paid by RPBs under the old and new systems (Table 2). This enables us to estimate the change in the burden of cost paid by RPBs. Under the current fees order every RPB would be charged £300 per IP, with the changes this will increase to £360 per IP. Increasing the per IP fee to £360 will not have any disproportionate effect on any particular RPB with each paying in proportion to their membership size.

**Table 2**

RPB	Current cost per RPB (£300 per IP) (£)	Cost with fees for 2016 (£360 per IP) (£)	Difference in total cost with new fees (£)
ICAEW	217,200	260,640	43,440
ACCA	45,300	54,360	9,060
IPA	166,800	200,160	33,360
CAI	14,100	16,920	2,820
ICAS	26,700	32,040	5,340
<b>Total</b>	470,100	564,120	94,020

1.19 Each RPB will see an increase in cost of around 17 per cent with the larger RPBs ICAEW and IPA having the largest increase in nominal terms of £43,440 and £33,360.

1.20 We have been notified that two further RPBs who currently authorise IPs will be withdrawing from the market in 2015/16. The withdrawal of LS and LSS from being RPBs and the removal of the authorisation by the SoS, which came into effect with the Small Business, Enterprise and Employment Act, means a number of IPs will be likely to switch to alternative RPBs for authorisation instead. This means some RPBs will have an increase in revenue depending on which is chosen. The impact of this change is explained in full in the impact assessment - *Removal of Competent Authority Provisions in Insolvency*<sup>5</sup>. For the purposes of this impact assessment the impact of IPs switching to a new RPB has been removed as it doesn't enable a straight comparison of cost impacts on RPBs before and after the fee changes.

1.21 The increased cost to RPBs of around £0.09m represents a direct cost to business under the Better Regulation Framework. The share of this cost that relates to new regulatory responsibilities would usually fall within scope of the Business Impact Target. However this cost to business was estimated with the primary legislation to provide additional powers and responsibilities and an EANCB score has already received validation from the Regulatory Policy Committee. To avoid double counting this score has not been recorded again<sup>6</sup>.

<sup>5</sup> Impact assessment available here - <http://www.parliament.uk/documents/impact-assessments/IA14-02L.pdf>

<sup>6</sup> Impact assessment available here - <http://www.parliament.uk/documents/impact-assessments/IA14-14O.pdf>

- 1.22 The new powers include the ability to fine or publicly reprimand RPBs for poor behaviour, direct RPBs to take a particular action and investigate directly a complaint against an IP.
- 1.23 The increased cost to RPBs represents an equivalent benefit to the public sector in higher fee income and is required to cover the cost of regulation.

### **Benefits to RPBs**

- 1.24 There are likely to be no real tangible benefits to RPBs as a whole from this change. Changing the fee structure to better reflect the costs of providing oversight for IP regulation will improve transparency of funding and may improve stakeholder confidence in the regulation of IPs. It would be disproportionate to try to monetise this benefit to RPBs.

### **Public Sector**

- 1.25 There is a non monetised benefit to the public sector from having greater transparency over the cost of regulating insolvency practitioners and having a regulatory system that provides better value for money; again, the effort required to monetise this would be disproportionate.

### **Insolvency Practitioners**

- 1.26 The increased costs to RPBs from the change in fees may be passed on to IPs through higher membership fees. Membership fees for RPBs vary considerably from £1,000 to £3,000 depending on which RPB the IP belongs to and the level of their activity. If we assume 100 per cent of the change is passed on to IPs we can estimate the maximum possible additional cost to business to be around £0.09m. If, however, RPBs choose not to pass on the full cost of the increase then the impact on IPs could range from zero to up to £0.09m, depending on the degree of pass through. This means the total cost to IPs from the change will be between **0 and £0.09m**, with a best estimate the mid point of **£0.047m**.

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

- 1.27 The increased cost of fees for IP regulation is a direct cost to business for RPBs and IPs directly authorised by the SoS. The majority of cost increases fall outside the scope of the business impact target because they relate to the existing regulatory powers and scope and merely reflect the cost of providing regulatory oversight or monitoring.
- 1.28 A share of the business costs are related to new regulatory powers and responsibilities and could fall within scope of the business impact target. However a previous impact assessment<sup>7</sup> which accompanied the primary legislation for the powers already scored the direct cost to business so including an estimate again would be double counting the EANCB. Further analysis on the work requirements from the new powers has shown that the cost increase estimated in the previous IA was higher than will be needed. Therefore the additional cost of the fee increase should not contribute a regulatory IN to the business impact target as the cost has already been accounted for and so the fee increase is out of scope of the business impact target.
- 1.29 Overall the increase in fee has a Business Net present value score of -£0.77m and an equivalised net cost to business of £0.09m (2014 prices).

### **Small and Micro Business Assessment**

- 1.30 Changing the fee levels will increase the overall cost burden on RPBs, Table 2 showed the distribution of costs on each RPB. The 5 RPBs directly impacted by the policy vary in size and analysis of their annual reviews has shown that 1 of the RPBs is a small business with less than 50 employees (Insolvency Practitioner Association). A third of the cost of the fee increase will fall on the IPA. It would be inappropriate to exempt IPA from the fee increase because as one of the largest RPBs they incur a significant share of the cost of regulating IPs.

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<sup>7</sup> The IA detailing these changes and the accompanying EANCB score is available here: <http://www.parliament.uk/documents/impact-assessments/IA14-14O.pdf>

1.31 Some of the increased cost of regulating IPs is likely to be passed on to IPs with higher membership fees. R3, the Association of Business Recovery Professionals, which represents 97% of the IP profession, estimate that a significant proportion of its IP members can be classified as micro and small businesses. Figures provided by R3 show that 46 per cent of members firms had less than 50 employees making them small or micro businesses. Assuming the share of the costs is proportion to the number of member firms and depending on the degree of pass through the share of the costs on small businesses is likely to be between 0 and £0.02m.

### **Other impacts**

1.32 There are likely to be no other impacts on competition, the judiciary, equality, families, environment or health and well being other than those described above.