

Title: Increase fees for applications for a grant of probate IA No: MoJ006/2018 RPC Reference No: N/A Lead department or agency: Ministry of Justice Other departments or agencies: HM Courts and Tribunals Service	Impact assessment (IA)			
	Date: 1 November 2018			
	Stage: Final			
	Source of intervention: Domestic			
	Type of measure: Secondary Legislation			
Contact for enquiries: mojfeespolicy@justice.gov.uk				
Summary: Intervention and Options				RPC Opinion: N/A

Cost of Preferred (or more likely) Option

Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB on 2014 prices)	Business Impact Target	Measure qualifies as
-£0.5m	n/a	n/a	Does not qualify	n/a

What is the problem under consideration? Why is Government intervention necessary?
HM Courts and Tribunals Service (HMCTS) plays a vital role in providing a diverse and integrated range of services and ensuring access to justice. It delivers a benefit for the direct court user as well the general public by providing a place where people can enforce and defend their rights. The Government is working closely with the Senior Judiciary and has established a programme of reform to deliver a modernised and more efficient courts and tribunals system which will help to reduce the operating costs of HMCTS. To run an efficient and effective service it is important to ensure that this is adequately funded. This will also reduce the taxpayer subsidy.

What are the policy objectives and the intended effects?
The Ministry of Justice's (MoJ's) long term aim is to protect access to justice by making sure that the courts and tribunals are adequately resourced while reducing the overall taxpayer subsidy to HMCTS. The cost of running HMCTS in England and Wales was £1.6bn in 2017-18 with approximately £740m recovered from fee income. This represents a net subsidy from the taxpayer of around £860m. To ensure that the courts and tribunals are adequately funded, the Government believes that a structure where probate fees are in proportion to the net value of an estate is fair and progressive as users of court services who can afford to pay more, should do so and thereby rebalance the contribution required from the taxpayer.

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

- Option 0: Do Nothing. Maintain the current flat fee structure for probate.
- Option 1: Increase the fees for applications for grant of probate (between £250 and £6,000) while raising the threshold at which an estate attracts such a fee from £5,000 to £50,000.

In the consultation on this policy, the Government proposed increasing the fees for applications for a grant of probate by between £300 and £20,000. The Government has now reconsidered the level of fees in light of concerns that were raised during the debate in Parliament. The new fees will be fairer for applicants as the fee will be based on a net value of an estate which will only apply to estates worth £50,000 and above. Furthermore, the fees will never exceed 0.5% of the value of the estate. We now intend to implement Option 1 as it best achieves the policy objectives in a proportionate way.

Will the policy be reviewed? It will not be reviewed. **If applicable, set review date:** N/A

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.	Micro No	< 20 No	Small Yes	Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A	Non-traded: N/A	

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

Signed by the responsible Minister: Lucy Frazer Date: 1 November 2018

Summary: Analysis and Evidence

Policy Option 1

Description: Increase fees for non-contentious probate proceedings

Price Base Year 2019/20	PV Base Year 2019/20	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: -0.5

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	1		
Best Estimate		0.5	170
			1,360

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

Transitional costs to HMCTS (from making minor adjustments to IT systems and reissuing forms and guidance) are expected to be up to £0.5m. The additional ongoing cost to court users from paying increased probate fees is estimated to be around an average of £170m per annum (based on an average over 10 years).

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

There may be some minor transitional costs related to HMCTS staff familiarising themselves with the changed fees, and for banks and building societies if they decide to issue updated guidance on when and how to release funds. Familiarisation costs for individuals and legal service providers who apply for probate are expected to be negligible. Applicants may, however, face a cash flow cost as probate fees are paid upfront usually by the executor or administrator (referred to as personal representatives in this document). This cost will be recouped once the grant of probate, or letter of administration, has been issued and the estate has been released.

The wider impact on legal service providers (mainly solicitors) may vary, dependent on the behavioural change of personal representatives. If the increase in fees encourages personal representatives to finance the probate fee by saving costs in other areas of the process, there may be a reduction in the workload of legal service providers. If, however, personal representatives appoint solicitors to act as their representative as a means for them to pay the increased fees, this may increase their workload. Solicitors or other professionals may require funds to be paid on account first and therefore may be more hesitant to fund fees for estates of higher net value.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	1		
High			
Best Estimate		0	170

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

HMCTS would benefit from increased fee income of around £170m per annum. The subsidy from the taxpayer to HMCTS would be reduced by a similar amount.

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

None.

Key assumptions/sensitivities/risks

Users may change their behaviour to avoid the increased fee. Our central scenario calculations factor in a 15% level of optimism bias for 2019/2020 and 10% optimism bias for subsequent years to account for any potential fall in income. While our best estimate of income is around an average of £170m per year (based on an average over 10 years), the true figure may differ depending on how users change their behaviour.

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

Evidence Base

A. Background

1. In England and Wales¹, obtaining a grant of probate or letter of administration is the process by which a personal representative demonstrates his or her authority to deal with the property, money and possessions (the 'estate') of the deceased after their death. It is applied for in the probate registry (Family Division) and is usually sought by the executor of the will of the deceased, or the administrator where there is not a valid will.
2. The current fees charged for a grant of probate are £215 if an application is made by an individual (around 40% of total applications in 2017)² and £155 for where it is made by a solicitor (around 60% of all applications)³. A 'personal' applicant is charged a higher fee compared to those submitted via a solicitor because of the additional administrative work the Probate Service has to undertake to process these types of applications. The existing fees reflect average administration costs and currently generate around £50m per annum in income for HM Court and Tribunals Service (HMCTS).
3. Not all deaths in England and Wales lead to an application of probate because the ownership of some assets (e.g., houses) can pass (usually to a surviving spouse) without a grant of probate when they were owned as beneficial joint tenants. Some assets can also be released without a grant of probate and some banks may allow the personal representative to access the account of the deceased to the value of £30,000 to pay other death-related expenses before the assets in the estate have been released. Individual banks will have their own policies about this and therefore, in practice, these procedures may vary between organisations. Additionally, any estate worth below £5,000 is currently exempt from paying a fee for a grant of probate.
4. The Probate Service helps ensure the estate of a deceased is passed on to the rightful beneficiaries and plays a vital role in tackling suspected fraud, duress and navigating complex cases, working with the Judiciary to provide a valued service to the public. In addition, the Probate Service is also often sought after for advice from the legal profession on ensuring wills have been prepared appropriately and are legally robust.
5. The Government consulted on earlier proposals for six weeks from 18th February to 1st April 2016. In the consultation, the Government proposed increasing the fees for applications for a grant of probate to between £300 and £20,000 while raising the estate threshold to £50,000. Following the consultation, the Government proposed to implement the option consulted on.
6. However, during the passage of the statutory instrument in Parliament in February 2017, there were significant concerns about the level of fees, particularly for the fee applicable to higher value estates. That statutory instrument did not complete its passage through Parliament before the General Election. Based on responses to the consultation, further evidence which was obtained during the consultation period and the debates in the House of Commons on that statutory instrument, the proposed fee structure has been revised. This Impact Assessment (IA) therefore assesses the revised fee structure which is now this Government's preferred option.

B. Policy Rationale and Objectives

7. An effective court and tribunals service needs to be funded appropriately in order to protect access to justice in the longer term. The Lord Chancellor has a statutory duty to ensure *an efficient and effective* courts and tribunals system.⁴ The Courts Act 2003 provides the Lord Chancellor with a power to

¹ Scotland and Northern Ireland have separate processes.

² October – December 2017 Family Statistics Quarterly, available here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/695363/family-court-stats-oct-dec-2017.pdf

³ The Non-Contentious Probate Fees (Amendment) Order 2014 - http://www.legislation.gov.uk/ukSI/2014/876/pdfs/ukSI_20140876_en.pdf

⁴ S1(1) Courts Act 2003 – "The Lord Chancellor is under a duty to ensure that there is an efficient and effective system to support the carrying on of the business of the Senior Courts, the Court of Protection, the county court, the family court and magistrates' courts, and that appropriate

prescribe fees in the courts and tribunals system which can assist him to fulfil this duty. HMCTS delivers a benefit for the direct court users as well the general public by providing a place where people can enforce and defend their rights. A large number of people interact with the services of HMCTS every year. Whether it be disputing parents in a family court, a vulnerable witness to a crime, or someone appealing a benefits decision, people interact with HMCTS at some of the most difficult times in their lives.

8. The Ministry of Justice's (MoJ) policy aim is to ensure that HMCTS is resourced in such a way that access to justice is protected. The cost of HMCTS in 2016-17 was around £1.6 billion, of which only £740m was recovered through fee income, leaving a net cost of c.£860m to the taxpayer. The Government believes this is unsustainable, therefore MoJ must look at other ways to raise income to secure the financing of HMCTS in the future.
9. Furthermore, the current system of flat probate fees also means the amount paid bears no relation to the value of the estate, resulting in smaller estates paying the same as larger ones. The Government believes that a structure where probate fees are more proportionate to the net value of an estate will be fairer and more progressive, and that those court users who can afford to pay more, should do so, thereby rebalancing the contribution from the taxpayer.
10. In the case of *R(Unison) v Lord Chancellor* 2017 UKSC 51, the Supreme Court struck down the fees payable in the employment tribunals, on the basis that they denied access to justice. However, the Court accepted that it is justifiable in principle to charge a fee as a way of funding our courts system. These fees must clearly be affordable in order to ensure we preserve access to justice and no one is denied this fundamental right. By increasing fees in areas where it is proportionate to do so, this allows us to cross subsidies in other areas where we charge no fees for more vulnerable people to access the system.

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 for non-contentious probate.**
- **Option 1 – Introduce a new fee structure for probate applications (ranging from £250-£6,000) and increase the threshold above which no fee is paid for such an application from £5,000 to £50,000.**

Option 0

12. Under the Do Nothing option the current fee structure would remain in place. In steady state, we estimate that the current system of probate fees would generate around £50m per year. Under this option, the subsidy from the taxpayer to HMCTS would remain at its current levels and all estates worth over £5,000 would pay the same flat rate fees.

Option 1

13. Under this option, a new fee structure will be introduced for all persons (including individual personal representatives, solicitors or other bodies such as charities) who apply for a grant of probate. The fees will be banded by the net value of the estate, with the highest fee payable being capped at £6,000 of the net value of estates worth £2m and above.

14. The proposed fee structure is shown in Table 1..

services are provided for those courts.” See also s6A Promissory Oaths Act 1868 and s180(3)(a) of the Anti-Social Behaviour Crime and Policing Act 2014.

Table 1: Proposed fee bands for probate applications

Value of estate (before inheritance tax)	Proposed Fee
Up to £50,000 or exempt from requiring a grant of probate	£0
£50,000 - £300,000	£250
£300,000 - £500,000	£750
£500,000 - £1m	£2,500
£1m - £1.6m	£4,000
£1.6m - £2m	£5,000
Above £2m	£6,000

15. The seven bands will create a more progressive fee structure whereby higher value estates will pay more compared to those of lower value. The fee will be based on the net value of an estate after outstanding debts but before any inheritance tax liabilities have been deducted.
16. This option also includes raising the threshold for when a grant of probate is required from £5,000 to £50,000. This will result in an estimated additional 25,000 estates per annum not being subject to a fee.
17. This option will also remove probate fees from the general remissions scheme. This is because, unlike other fees for civil and family proceedings, a personal representative (on whom the remissions scheme is assessed) can recover the fee after the estate has been released. The personal representative will be able to access the cash funds of the estate and use them to pay the fee. According to HM Revenue and Customs (HMRC) Inheritance tax statistics, on average around 25% of net estate values in 2014-15 was held in cash⁵. Personal representatives will also be able to apply for limited access to the estate purely for the purpose of paying the fee. Finally, the Lord Chancellor retains a discretionary power to grant exceptional fee remissions. We consider that these provisions provide sufficient safeguard with respect to access to justice and that no personal representative is put in a position of being liable for a fee they cannot pay.
18. Compared to the Government's initial proposal, under Option 1 the fee charged will correlate to estate value but these fees have been reduced by at least 16% at each band. Under this option, for those who will pay, around 60% of estates will pay a fee of £250, which is a modest increase from the current fee of £215 for a personal application. Of those who will pay, around 80% of all estates will pay a fee of £750 or less.⁶

D. Affected Stakeholder Groups, Organisations and Sectors

19. These reforms will primarily affect persons making an application for a grant of probate. A list of all the main groups that would be affected is show below:
 - Individuals – those personal representatives who apply for a grant of probate, and those individuals who are beneficiaries of the estate;

⁵ Inheritance Tax Statistics, available here:
<https://www.gov.uk/government/statistics/inheritance-tax-statistics-table-124-assets-in-estates-by-range-of-net-estate-and-tax-due>

⁶ Calculated by MOJ internal analysis, based on probate estate projects data provided by HMRC and using ONS population projections. Population projections can be found here:
<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationprojections>

- HMCTS – who operate the Probate Service;
- Taxpayers – who subsidise HMCTS as overall HMCTS income falls below its overall costs;
- Legal services providers - who supply probate-related services;
- Banks and building societies - who provide access to funds for personal representatives; and
- Charities - who act as personal representatives of, or are beneficiaries from, the estate.

E. Cost and Benefit Analysis

20. This IA identifies both monetised and non-monetised impacts on individuals, groups and businesses in England and Wales with the aim of understanding what the overall impact on society might be from implementing the preferred option. The costs and benefits of each option are compared to the Do Nothing or 'baseline' case, where probate fees are maintained at their current levels. 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

21. We present the average annual costs and benefits throughout this IA, although our sensitivity analysis does look at factors that may have an impact on the expected fee income. These factors include any behavioural impacts from the new fee structure by those applying for a grant of probate or any potential 'pull forward' of applications in the period immediately prior to the fee change, where applicants seek to pay the existing fees (see the section below on risks and sensitivity).

22. To estimate the additional fee income, we have used data⁷ on estate volumes and net values in England and Wales. These projections are based on inheritance tax forecasts used for the 2017 Autumn Budget after adjustments for the value of any gifts made in the seven years prior to death (which do not form part of an estate for probate purposes). The proposed fees were then multiplied by the number of eligible estates in each fee band to give the predicted additional income for HMCTS after the current probate fee income has been deducted.

Demand

23. Court user behaviour (demand) may change in response to an increase in court fees. Where this occurs, the scale of this effect is measured using a concept known as the price elasticity of demand. In the case of probate services, it is unlikely that demand will change in response to the planned fee changes because the demand is related to the number of deaths, which is relatively stable in England and Wales, and unless the estate is below the threshold for a grant of probate or exempt, an application for a grant of probate is required in each instance.

24. These considerations suggest that the volume of probate applications will be relatively price inelastic and that existing caseloads should not change substantially in response to the proposed fee changes. Nonetheless, to factor in a degree of risk that should account for any unforeseen changes in demand or income, the income estimates include a 15 percent⁸ level of optimism bias for 2019/20 and a 10 percent level for subsequent years. These assumptions are explored further in the risk and sensitivities section (section F) below.

Limited Access and Remissions

25. We assume there will be no remissions apart from those granted in exceptional circumstances under the Lord Chancellor's power. This is because we believe that most personal representatives will be able to access the bank account(s) of the deceased in order to cover the cost of the new probate fees, or able to access products such as loans secured against the value of the estate. The total value of

⁷ Calculated using MOJ internal analysis, based on data provided by HMRC.

⁸ In the first year of implementation, optimism bias is 15% to account for the 'pull forward' effect. This is discussed further in section F.

any remissions granted under such circumstances has not been quantified but is not thought to be substantial.

Net Present Value

26. 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 apply for probate and HMCTS.

Option 1 – Introduce a new fee structure (ranging from £250-£6,000) for applications for a grant of probate and increase the threshold for such an application from £5,000 to £50,000.

Costs of Option 1

Transitional costs

HMCTS

27. HMCTS is expected to incur costs for making amendments to the court IT systems and fee charging regime and HMCTS may need to increase staffing to ensure the system can cope with the initial surge as well as familiarise themselves with the new fees. There may also be transitional costs if there is a pull forward (or push back) of cases (see Section F), as staff may need to be brought in on a temporary basis to deal with the spike in caseload. These one-off transitional costs for HMCTS are expected to be less than £0.5m.

Legal services providers and those individuals applying for probate

28. There may be familiarisation and awareness costs incurred by individuals and legal services providers who apply for probate. These have not been monetised but are not expected to be significant.

Banks and building societies

29. There may be transitional to costs to UK Finance (formerly known as the British Banking Association) and the Building Societies Association from updating guidance to their members relating to the release of funds to pay for bereavement expenses, of which the new probate fees will form part. There may also be familiarisation costs to staff in branches of banks and building societies who will need to understand the new proposals and updated guidance. These costs have not been monetised but are not expected to be significant.

Ongoing costs

Individuals or legal services providers who apply for probate

30. Table 1 (above) shows what fee an estate would pay under new probate scheme. Under Option 1, if an estate is valued at £50,000 to £300,000, court users would be subject to an additional cost of £35 compared to the current fee. If an estate is valued at over £2m, they would be subject to a maximum additional cost of £5,785. Given the current court fee income from making grants of probate, and under the fee proposals set out in Table 1, we estimate the additional costs to all users of the Probate Service will be £170m per year (average over the ten year appraisal period).

31. Of the approximate 260,000 applications for a grant of probate per annum, around 60% are currently made by solicitors. Changes to the probate fee structure may lead to a reduction in work levels for probate solicitors if personal representatives feel pressured to save money elsewhere in the process to finance the probate fee, and therefore apply in person rather than through a solicitor. Nonetheless use of a solicitor may provide assurance to the representatives, and may also be beneficial in tandem with advice on inheritance tax, therefore it is questionable as to whether we will actually see a decline in the use of solicitors.

32. There may be benefits to solicitors if personal representatives become more likely to appoint a solicitor as their representative if the solicitor is able to cover the fee in the short term. This may provide a short-term cash-flow cost for solicitors, but could have the longer-term effect of increased workloads. There is a risk though that given the increase in fees, smaller firms may not be able to fund this. As data does not exist to be able to estimate these potential impacts, they have not been monetised.

Costs to banks and building societies

33. There may be administrative costs to banks and building societies if personal representatives are more likely to ask for access to the deceased's accounts to pay the probate fee. This could happen for those estates where the proposed fee is significantly higher than under the current arrangements. We do not expect these costs to be significant because banks and building societies already have policies in place to allow access to funds where necessary, so the additional burden should be small.

Costs to beneficiaries of the deceased's estate

34. Beneficiaries of the estate may incur a cost if, because of the increased probate fees, they receive a smaller proportion of the deceased's estate. This will mainly affect relatives of the deceased, but may also impact charities⁹. This impact totals £170m per annum but the impact on individual beneficiaries is not expected to be substantial because in all cases the level of the probate fees will not exceed 0.5% of the net value of the estate.

Benefits of Option 1

Ongoing benefits

Benefits to HMCTS

35. As a result of the proposed changes, we estimate HMCTS will benefit by around £170m per annum from additional fee income (average over the ten year appraisal period and in 2019/20 prices).

Wider benefits to society

36. Increasing fees for grant of probate above cost would reduce the net costs of operating HMCTS and, therefore, reduce the level of public subsidy provided to HMCTS. In addition, introducing higher fees in cases where it is affordable and proportionate reduces the need for us to consider setting and charging fees for more vulnerable people to access the system.

Net impact of Option 1

37. HMCTS is expected to incur transitional costs from implementing the new fee regime (estimated at up to £0.5m). Individuals and solicitors who apply for a grant of probate are also expected to incur negligible costs from familiarising themselves with the new fee structure. There may be transitional costs to banks from producing updated guidance on whether to release an estates funds although these are expected to be minimal.

38. On an ongoing basis the proposals are expected to generate increased fee income for HMCTS of around £170m per annum (based on an average over ten years). As this benefit to HMCTS will be offset by the additional cost to users of probate services, the ongoing net impact of the proposal is estimated to be minimal.

39. There may be ongoing benefits or costs to the providers of legal services depending on whether personal representatives use solicitors more or less because of the proposals. Banks and building

⁹ Data from HMRC suggests that roughly 16% of estates leave something to charity, and of these estates, it is estimated they will leave around 25% of the value of the estate. These figures vary according to the value of the estate.

societies may face extra administrative costs if personal representatives ask for access to the deceased's bank accounts more often.

F. Risks and sensitivity analysis

40. There are several potential behavioural effects that may occur as a result of implementing the Government's preferred option. These effects may either increase or decrease the additional income stated in paragraph 3. To capture these risks, the above income estimates include a 15 percent level of optimism bias in year one and a 10 percent level of optimism bias in all subsequent years. These risks are examined in more detail in the following paragraphs.

The pull forward effect

41. Before any planned fee increase, there is a risk that court users will bring their applications forward to avoid paying the increased court fee. This can create a spike in caseloads, followed by a trough in the following months after which demand should return to normal levels. This 'pull forward' effect would only occur in the period surrounding a fee change and not impact on income in future years. For example, when the alternative scheme was announced for implementation in May 2017, we observed around a 20% increase in probate applications in the two months before the planned implementation.

42. We examined the volume of probate applications made before and after the previous April 2014 fee change to applications for a grant of probate but found little evidence to confirm a pull forward effect, which may have been because these fee changes were of a relatively small size. We also looked at evidence from fee changes for other case types but, due to the unique nature of probate applications, we did not think the experience seen in those jurisdictions were transferable to probate applications.

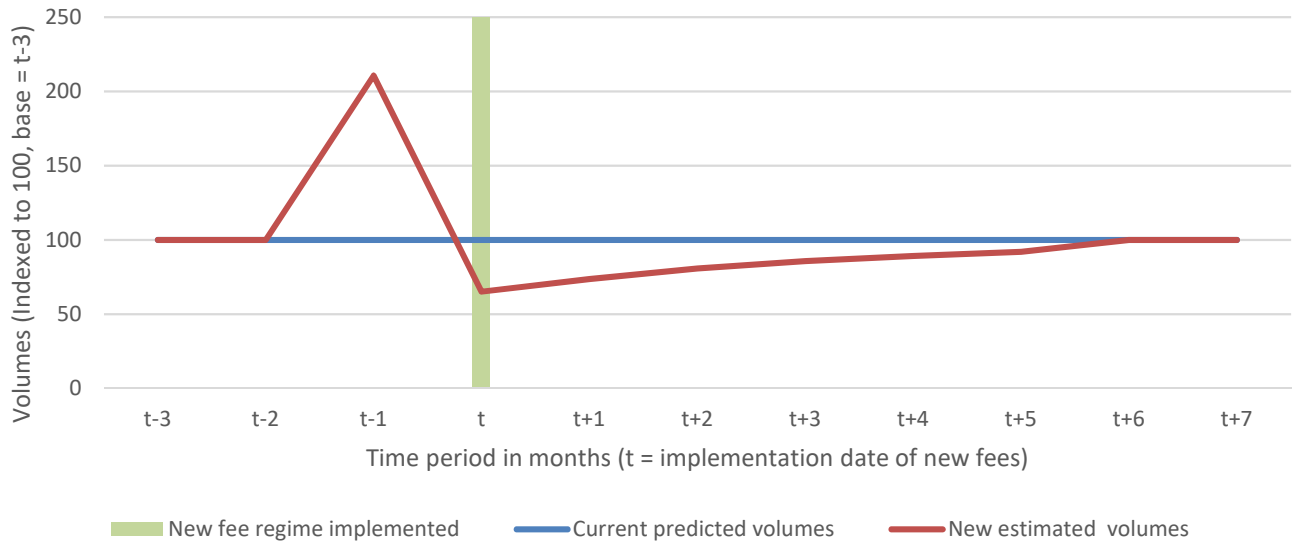
43. We have, however, used management information received from the Probate Service based on the time lag between date of death and when applications for probate are normally received¹⁰, and assumptions based on the proportion of applications that may 'pull forward' to present an illustration of the magnitude of any potential effects below. We assume that:

- If the date of death was within two weeks of the new fees being implemented, any applications received from this group would be unaffected. This is because these individuals would be unlikely to do this at a time when emotional factors will be foremost in their minds;
- For deaths occurring between the announcement of the new fee structure to two weeks prior to its implementation, 25% of all probate applicants made by individuals will be made earlier than otherwise to pay the lower fees; and
- 50% of probate applications by solicitors will be brought forward to before the new fees come into effect. This is because a solicitor is more likely to reprioritise their work to avoid the higher fees. It is likely they will have more information and a better understanding compared to an individual who personally applies for a grant of probate.

44. Figure 1 is an illustrative example of the possible effect on demand from around the time when the new fee structure is announced. The green bar shows the date when the new fee structure is implemented while the blue line is used to compare what would happen if there were no changes to the number of applications. Examining the red line, the spike of applications demonstrates that applications, which would otherwise have been issued after time period "t", have been pulled forward so they incur the old fee. In the 6 months following implementation demand slowly returns to normal levels.

Figure 1: The pull forward effect

¹⁰ The data shows that on average it takes 2-3months for individuals or solicitors to submit their probate application, with around 15% taking less than 1 month and 20% greater than 6 months.



45. Finally, there is also a possibility of a ‘push back’ effect, which is the opposite of the pull forward effect. Some applicants whose estates are valued between £5,000 and £50,000 may choose to delay applying for a grant of probate to benefit from the change in fees (i.e. delaying their application to get a free service). We suspect these instances will only make up a small proportion of applications, so any impact on income is not expected to be substantial.

Behavioural impact

46. When the price of a good or service rises, the usual response is for people to consume less of that good or service. In the case of probate applications, we believe that the risk of people changing their behaviour and making fewer applications is small as in most cases death will require a grant of probate. Therefore, the volume of applications should remain fairly constant as they are based on death rates in England and Wales which are broadly similar from year to year.

47. A greater potential risk, though, is that the personal representatives involved, or their representatives, may try and decrease the value of the estate by running down or removing assets. This is a risk both before and after death, but is most likely to materialise afterwards and especially where people die suddenly and no action to undervalue the estate would have been possible prior to this point. Furthermore, as the fees are implemented and the system becomes more embedded, more people may start to arrange their estates with the probate fee in mind.

48. We would therefore expect attempts to decrease the value of an estate to occur after death and to focus on assets which are easy to remove, such as cash and personal possessions, with the aim of moving the estate into a lower probate fee band. HMRC statistics¹¹ on inheritance tax estimate that approximately 25% of the average net estate value is cash, which would reflect a ‘worst case’ scenario of the potential for individuals to decrease the net value of an estate, although the incentive for someone to reduce the value of the estate is greatest for those estates that are valued at just above the lower limit of a fee band.

49. If individuals reduced the value of the estate so it moved into a lower fee band we would expect to see a clustering of estates around the upper limit of fee bands. Data from the Probate Service provided to HMRC does show some evidence of clustering around the current nil rate bands for inheritance tax (i.e. £325,000 for an individual and £650,000 for a married couple or civil partnership). For example, if we expected estate values to be uniformly distributed between £320,000 and £330,000 we would expect just under three percent of estates to have a value between £324,750 and £325,000. However, just over five percent of estates in the HMRC data showed a value between £324,750 and £325,000, which is some evidence of clustering of estate values at the top end of lower rate bands.

¹¹ Inheritance Tax Statistics, available here:

<https://www.gov.uk/government/statistics/inheritance-tax-statistics-table-124-assets-in-estates-by-range-of-net-estate-and-tax-due>

50. The implication of this behavioural change, if widespread, is that the preferred option would generate lower than expected income for HMCTS. With the data available it is not possible to predict how individuals might alter their behaviour following a change to the fee structure, but we have modelled scenarios to show how expected income for HMCTS might change in response to individuals devaluing the estate. As an illustration, if 10% of estates within each fee band, decreased the value the estate such that they moved into a lower fee band then there could be a potential loss of income for HMCTS of around £15m a year.

51. These predictions, however, assume that people:

- know the probate fee structure;
- can accurately value the assets;
- will have the inclination to do this at a time when emotional factors will be foremost in their minds;
and
- are minded to do this.

52. To account for these behavioural risks explained above, and potential pull forward effects in year one, we have factored in a 15% level of optimism bias in our income estimates for year 19/20 and a 10% level in subsequent years. Evidence from previous fee changes in other courts and tribunals have shown that users are responsive to changes in price, although the exact level of responsiveness is difficult to predict and varies from fee to fee.

Inheritance tax interplay

53. When examining the impact of any behavioural response to an increase in probate fees, we also need to consider the wider picture. From 2017, the inheritance tax threshold has risen¹² and, by 2020-21, some estates will not have to pay any inheritance tax on the first £1m of an estate.

54. Under the current inheritance tax system, there is a major incentive for estates to be subject to a conservative valuation where the net value is above the tax threshold. The implications are that because of reforms to inheritance tax fewer estates will be above the tax threshold, therefore fewer individuals will have the incentive to undervalue the assets in their estate.

55. We therefore assume that any offsetting impact on income from the proposed probate fees changes will not be substantial. This is because these fees will still only be a small cost in relation to the size of the estate (fees would be set at no more than 0.5% of their value) compared to inheritance tax which is based on a 40% tax rate on any assets valued over the tax-free threshold.

56. There may be some incentive, however, to reduce the value of an estate whose net value is just above the new probate threshold or just above the lower boundary of a probate fee band. For estates worth just above the threshold level this incentive already exists and should be reduced as a result of the threshold level increasing far more than the proposed lowest fee payable. For estates valued above the threshold, because each fee band is very broad (i.e., because most estates in a fee band will be some distance in value terms from the bottom boundary for the band), we do not believe these incentives will be strong for the majority of estates and so we expect any resulting reduction in income to be minimal.

Probate volumes

57. Probate volumes are based on the number of applications made in 2014-15, which have been forecast forward to 2019-20. The data were provided by HMRC and were used in the 2017 Autumn Budget for calculating inheritance tax receipts. Due to changes in the underlying death rate, and any year-on-year fluctuations in the number of deaths, there is a risk that the number of applications will be slightly higher

¹² <https://www.gov.uk/government/publications/inheritance-tax-main-residence-nil-rate-band-and-the-existing-nil-rate-band/inheritance-tax-main-residence-nil-rate-band-and-the-existing-nil-rate-band>

or lower than what HMRC have estimated and therefore that the income generated may differ to what is outlined in Section E.

58. Conversely, over time, there may be a risk that HMCTS receives more income than predicted as estate values rise faster than what HMRC predict and therefore, more estates would move into the higher fee bands.

G. Enforcement and Implementation

59. 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 application would not be permitted to proceed. This would continue to apply under the options being considered.

H. Monitoring and Evaluation

60. The MoJ continuously monitors the impact of all fee changes both in terms of the impact on case volumes and in respect of their success in generating the anticipated levels of income.

I. Business Impact Target

61. Adjustments to fees or charges to reflect the cost of providing a service are not regulatory provisions therefore this measure does not qualify for the business impact target.