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|--|---|--|--|
| Title: Reform of the process by which debtors apply for bankruptcy IA No: Lead department or agency: The Insolvency Service, executive agency of the Department for Business, Innovation and Skills Other departments or agencies: Ministry of Justice | Impact Assessment (IA) | | |
| | Date: 07/08/2012 | | |
| | Stage: Final | | |
| | Source of intervention: Domestic | | |
| | Type of measure: Primary legislation | | |
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| Summary: Intervention and Options | | RPC Opinion: RPC Opinion Status | |

| Cost of Preferred (or more likely) Option | | | |
|---|----------------------------|--|---|
| Total Net Present Value | Business Net Present Value | Net cost to business per year (EANCB on 2009 prices) | In scope of One-In, Measure qualifies as One-Out? |
| £98.1m | £0m | £0m | Yes |
| | | | Zero Net Cost |

What is the problem under consideration? Why is government intervention necessary?
 Petitions presented by debtors for their own bankruptcy must be presented to court. Expensive judicial time is spent considering these applications, yet there is no element of dispute and in nearly every case the court routinely makes the order sought. This is an inefficient use of court time, requires the debtor to attend for what is an unnecessary court hearing and can create delays in the court system. Government intervention is needed to amend the Insolvency Act 1986 to replace this function with a more efficient administrative process to provide a more cost effective and accessible route into bankruptcy for debtors presenting their own petition.

What are the policy objectives and the intended effects?
 The policy objective is to improve the accessibility of bankruptcy for debtors who may be discouraged from engaging in a court based process and to facilitate the provision of an electronic administrative entry route into bankruptcy. The intended effects are to relieve the courts of a function that is essentially procedural in nature, whilst introducing a more efficient administrative process leading to savings for Government, individuals and business.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)
 Three options have been considered:
 Option 1: Reform the process for dealing with applications for bankruptcy on the petition of the debtor.
 Option 2: Do nothing. This option makes no changes to the current system.
 Option 3: A wider range of reforms including moving creditor bankruptcy petition and company winding-up applications out of the courts. In view of the responses received to consultation on these wider measures they are not being proceeded with at this stage and are not considered further in this impact assessment.
 Option 1 is the preferred option as it introduces a more efficient administrative process leading to savings for Government, individuals and business. Due to the legislative nature of the problem (the law requires the Court to make a bankruptcy order), it is not possible to consider alternatives to regulation.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** Month/2020

| | | | | | |
|--|--------------------|----------------------|--------------------|---------------------|--------------------|
| 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 No | Medium No | Large No |
| What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent) | | | Traded: | | Non-traded: |

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

Signed by the responsible SELECT SIGNATORY: _____ Date: _____

Summary: Analysis & Evidence

Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

| Price Base Year | PV Base Year 2012 | Time Period Years 10 | Net Benefit (Present Value (PV)) (£m) | | |
|-----------------|-------------------|----------------------|---------------------------------------|---------------|-----------------------|
| | | | Low: £62.8m | High: £131.7m | Best Estimate: £98.1m |

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

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

The set-up costs have been estimated to be around £2m. This is a one-off cost, to develop IT and set up the Adjudicator's office, and has been subsumed within the anticipated running costs. There are no other monetised transition costs. Annual running costs will be fully recovered through the fees charged for the cost of processing this work. All monetised costs are therefore included within the monetised benefits below.

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

There may be some modest familiarisation costs for those involved in the provision of debt advice, mainly large organisations within the civil society sector. Given that the impact is estimated to be negligible it is deemed disproportionate to undertake an analysis to monetise these costs.

| BENEFITS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) |
|---------------|---|--|-------------------------------|
| Low | | 7.3 | £62.8m |
| High | Optional | 15.3 | £131.7m |
| Best Estimate | | 11.4 | £98.1m |

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

Removing the courts from the debtor petition process should result in resource savings for Government, plus savings for individuals.

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

Indirect benefits to business are anticipated to arise as a result of a small increase in the proportion of debtor petition bankruptcies in relation to creditor petition bankruptcies. Illustrative savings in the range of £1.6m to £3.3m have been indicated.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

1. If bankruptcy numbers increase/decrease, estimated running costs (and therefore net benefit) will vary accordingly. 2. The level of fee charged to each applicant by the Adjudicator will be set to match the activity required under the administrative process. 3. Additional longer term savings for Government (HMCTS) based on the removal of debtor petitions from the courts will take time to realise because of the relatively fixed nature of the associated costs.

BUSINESS ASSESSMENT (Option 1)

| | | |
|---|-------------------|----------------------|
| Direct impact on business (Equivalent Annual) £m: | In scope of OIOO? | Measure qualifies as |
| Costs: 0 | Yes | Zero net cost |
| Benefits: 0 | | |
| Net: NA | | |

Evidence Base (for summary sheets)

BACKGROUND

1. In 2007, the previous administration first invited views on the feasibility of removing the courts from the order making process for debtor petition bankruptcies. This first consultation, *'Bankruptcy: Proposals for Reform of the Debtor Petition Process'*¹ proposed that orders which followed debtors' own petitions for bankruptcy could be made administratively by a suitably qualified and experienced official based within The Insolvency Service.
2. In view of the general support for this concept, and with growing recognition that court services were reaching their capacity to deal with these types of cases, a further consultation entitled *'Reforming Debtor Petition Bankruptcy and Early Discharge'*² was published in November 2009.
3. A fundamental part of the proposals consulted upon was the introduction of a new office for a Secretary of State appointed decision maker, or Adjudicator. The office-holder would have the relevant skills, experience and expertise to enable him/her to make an administrative decision whether to grant a bankruptcy order based on the debtor's petition.
4. A total of 37 businesses, individuals, and representative bodies responded to the November 2009 consultation. The majority indicated broad support for the proposals, and in particular, for the office of the decision maker - now to be called the Adjudicator - to sit within The Insolvency Service but to be independent of the office of the official receiver.
5. This Government subsequently issued a further consultation on a broader scope of reforms, extending the proposals to include equivalent changes to creditors petitions in bankruptcy and also to most compulsory winding up petitions against limited companies that are also presented to the courts. This impact assessment follows on from that consultation paper entitled *'Reform of the Process to Apply for Bankruptcy and Compulsory Winding Up'*, issued in November 2011.
6. In light of responses received to this latest consultation, Ministers have decided not to proceed with these wider reforms at this stage but will confine them to debtor petitions in bankruptcy. As such, this impact assessment is solely concerned with how the process by which debtors may petition for their own bankruptcy may be reformed.
7. Debtors petitioning for their own bankruptcy are not businesses but individuals – no change is proposed to the way that businesses or other creditors present bankruptcy petitions against individuals. The vast majority of those presenting their own bankruptcy petitions are consumer debtors with personal credit liabilities. A small number of these

¹ http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/con_doc_register/deptorpetresp.pdf

² http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/con_doc_register/Debtor%20Petition%20Reform%20Final%20Nov%2009.pdf

individuals may formerly have been self-employed, but will have ceased trading at the time of entering bankruptcy.

Problem Definition

8. The traditional role of the court in most areas of civil law has and continues to be to resolve disputes and hear applications brought before it. However, under the Insolvency Act 1986 all petitions for bankruptcy must be presented to the court, even when it is the debtor him/herself who is seeking the relief that bankruptcy brings and where there is no dispute as to the debtor's insolvency. On the hearing of the petition, the court invariably makes the bankruptcy order (in 2010/11, the court made an order in 96% of cases where debtors presented their own petition – see **Figure 1** below) and this therefore represents an unnecessary and inefficient use of scarce judicial time. This inefficiency is a problem that the policy seeks to resolve by removing these petitions from the court.

9. The routine nature of debtor petitions is borne out by **Figure 1** below which shows the vast majority of petitions presented by debtors do result in a bankruptcy order being made by the court, in contrast to those presented by creditors. Debtors seeking the relief of bankruptcy are individuals, most often consumer debtors unable to service personal credit liabilities, and are not businesses.

10. Whilst no statistics are maintained as to the reasons why the court may decline to make an order, it is likely that in the majority of cases this will be for administrative reasons. Such reasons could include:
 - The debtor presenting the petition in the wrong court
 - The required documents presented to the court not being in order
 - Issues surrounding the (non) payment of court fees and/or the bankruptcy deposit

11. The administrative system will be designed to ensure that the above issues do not arise as checks will be built in to the system to ensure that an application cannot be formally made until the required fees have been paid and the application form properly completed.

Figure 1: Table showing ratio of petitions filed against orders made, 2010/11

| Petition Type | Number of petitions filed | Number of orders made | Number of orders not made | Percentage of orders made (%) |
|---------------------|---------------------------|-----------------------|---------------------------|-------------------------------|
| Debtor bankruptcy | 47,117 | 45,000 | 2,117 | 96% |
| Creditor bankruptcy | 17,493 | 8,400 | 9,093 | 48% |
| Company winding up | 10,711 | 4,573 | 6,138 | 43% |

Source: Ministry of Justice, and The Insolvency Service statistics

12. The number of debtors petitions has risen substantially over the last 10 years, although have recently fallen back from the level at which they peaked in 2009. At that time official

receivers around the country reported significant backlogs in the hearing of petitions and other insolvency applications as a result of the strain on court resources. However, if the number of bankruptcy petitions were to return to anything approaching those levels again there is a risk that the courts might be insufficiently resourced to be able to deal effectively with them, at least without considerable delays being seen again.

13. Petition levels have fallen since 2009 and that trend is likely to continue. It is important to consider the recent fall in petition levels in the context of the introduction of debt relief orders – an analogous insolvency procedure to bankruptcy which was introduced in April 2009 for those with liabilities of less than £15,000 and minimal assets. In 2011, there were 29,009 debt relief orders. The introduction of this procedure has resulted in a fall in the level of debtor petition bankruptcies – a trend which is expected to continue.

Figure 2: Table showing number of debtor bankruptcy petitions filed, 2002 -2011

| | |
|------|--------|
| 2002 | 16,507 |
| 2003 | 19,323 |
| 2004 | 26,776 |
| 2005 | 36,897 |
| 2006 | 52,678 |
| 2007 | 53,080 |
| 2008 | 55,663 |
| 2009 | 62,864 |
| 2010 | 51,957 |
| 2011 | 35,963 |

Source: Ministry of Justice statistics

Rationale for intervention

14. Replacing the existing court process with an administrative process will deliver a more efficient process and provides scope to modernise the process by opening up the option of an electronic application for the user. Debtors should benefit from lower fees and a more flexible application process and in the longer-term there ought to be savings for both Government and business. This can only be achieved by Government intervention through changes to primary legislation because the current process is governed by the Insolvency Act 1986. It is not possible to effect these changes by non-regulatory means.

Objectives

15. The policy objectives of these new proposals are to:

- **Increase accessibility to bankruptcy.** Those individuals for whom bankruptcy is the best solution to their debt problems can be put off from applying for bankruptcy because of the need to attend court. The opportunity to use a new electronic application process provides greater flexibility for the debtor;
- **Improve efficiency of public services.** Judicial and court resources are unnecessarily deployed in administering undisputed debtor bankruptcy petitions which

are essentially procedural in nature. The new electronic application process also provides scope for administrative efficiency savings;

- **Reduce costs for business.** Those debtors who are put off from engaging with a court based process may continue to incur further amounts of credit leading to further losses to business, and businesses may incur the expense of presenting creditor bankruptcy petitions where debtors may be discouraged from doing so themselves.

Option 1: Reform the process by which debtors apply for bankruptcy

16. Under this option, all applications for bankruptcy on the petition of the debtor will be submitted to an Adjudicator, who will be a person appointed to that role by the Secretary of State. An administrative system that allows debtors to submit their bankruptcy applications to an Adjudicator rather than present a petition to the court would facilitate efficiencies.
17. All applications by debtors for their own bankruptcy are, by their nature, made voluntarily and with the consent of the party who will receive the relief that is provided by an order being made. It is proposed that applications for such orders will be made to the Adjudicator and that the Adjudicator will make the orders administratively.
18. Applications by creditors (and certain other third parties who are currently entitled to petition for an individual's bankruptcy), in respect of debtors will continue to be presented to and determined by the court as they are now.
19. The proposals relate solely to the processing of applications for bankruptcy up until the bankruptcy order is made and not the administration of the bankruptcy post-order. No changes are therefore proposed to the cost or process of bankruptcy once the order has been made.
20. Under option 1, any delays involved in having a petition heard at court would be removed, as would the stigma of attending hearings for the debtor, thus improving the accessibility of bankruptcy. Removing such petitions from the courts would both free up court time to deal with court processes which do require judicial input, and facilitate a swift start to the case administration process for the official receiver.

Option 2: Do Nothing

21. This option makes no changes to the current system whereby petitions for debtors' bankruptcy have to be presented to the court. Debtors may be discouraged from applying for bankruptcy because of the fear of engaging with a court based process and court resources will continue to be used in an inefficient way to determine matters that are not in dispute.

COSTS AND BENEFITS

22. The proposed changes will impact mainly on Government and individuals. In order to assess the costs and benefits of each option, this impact assessment considers quantifiable information collated and recorded by The Insolvency Service and published data from the Ministry of Justice.
23. For each option, the current and anticipated costs and benefits have been calculated according to a range of different case number forecasts, as the number of petitions presented by debtors will have a significant impact on these costs and benefits. Three models have been used to contrast the costs of administering petitions presented by debtors under the present system to that under the proposed administrative process: Model A (30,000 cases), Model B (22,500 cases) and Model C (15,000 cases).
24. The three scenarios outlined are in line with the forecasting undertaken by the Insolvency Service. Experts from inside and outside Government have contributed to the development of the models used to produce the forecasts, which are run on a quarterly basis by the Insolvency Service statistics team. The models include key factors which have been found to affect caseload – for consumer bankruptcies these are total household debt, GDP growth and interest rates. There is also an additional adjustment in the model to take account of the introduction of Debt Relief Orders, which effectively provide an alternative to bankruptcy for those with debts of less than £15,000 and minimal assets, and as such has reduced the likely number of consumer bankruptcy cases.
25. The number of petitions presented to the court by debtors seeking their own bankruptcy has fallen from around 63,000 in 2009 to around 35,000 in 2011. A lower range of estimates has therefore been shown to reflect the potential impact of a continuation of this trend, as there is not expected to be any significant impact on overall bankruptcy numbers as a result of these proposals. The mid-range scenario of Model B is expected to represent the most likely forecast in the foreseeable future.
26. However, if petition numbers were to return to higher levels, the potential for savings would increase and the likely application fee could be reduced further. At 40,000 petitions, for example, the likely application fee is estimated to reduce to around £60, with the potential for even greater resource savings. As this scenario is not considered likely, it has not been modelled further within this impact assessment, but it is noted here to demonstrate that unforeseen higher petition level numbers will increase the benefits of the policy.
27. This impact assessment will start with the option 2 analysis of ‘do nothing’ as this provides much of the base information for the changes proposed under option 1.

ANALYSIS OF OPTION 2 – DO NOTHING

Present costs

28. Currently, the court fee that debtors are required to pay to the court when petitioning for their bankruptcy is £175 (it was increased from £150 to £175 in 2011). Some individual debtors do qualify for a means-assessed exemption from paying the full court fee. In 2007, The Insolvency Service commissioned a GfK NOP survey, which asked debtors who had petitioned for their own bankruptcy whether they had paid the (then) full court fee of £150. Approximately 50% of debtors confirmed that they had received the benefit of fee remission, which meant that they did not have to pay either all or some of the court fee, a benefit to this group of individuals that would continue if the current process were to remain the same.
29. In addition to the court fee, when a bankruptcy petition is presented to court, whether by a creditor or the debtor him/herself – a deposit is payable on presentation of the petition, which is used to (partially) fund the case administration fee. The balance is recovered from the realisation of any assets in such insolvent estates. For debtor petition bankruptcies, the deposit that is payable as security against the case administration fee is currently £525. This deposit is payable in addition to the court fee that petitioners making an application are required to pay to the court. As no changes are proposed to the process of bankruptcy, there will be no changes to the level of deposit that debtors are required to pay .
30. By not changing the current procedure, there would be no familiarisation or capital costs in setting up a new administrative system. However, the monetary and non-monetary costs to debtors of petitioning for bankruptcy would remain the same. These include the unnecessary expense of involving the court in matters which are not in dispute, the psychological effects on indebted individuals, and the economic impact on business where debtors continue to incur credit. The costs of the current system are discussed further below.

HM Courts & Tribunals Service

31. The Insolvency Service has worked with HM Courts & Tribunals Service (HMCTS) to ascertain the cost of dealing with bankruptcy applications. The figures below are therefore based upon information provided by HMCTS.
32. Since HMCTS would continue to administer and adjudicate upon bankruptcy petitions presented by creditors and on petitions presented for company winding-up, they will continue to require the infrastructure and judicial resources to deal with these applications. The adjudication of debtor petition bankruptcies forms only a small proportion of the range of activities undertaken by HMCTS, and it would not therefore be possible to reduce existing infrastructure or judicial resources at the same time as removing debtor petitions from the court. However, the resources tied up in unnecessarily dealing with debtor petition bankruptcies represent an economic cost, as they could be more effectively utilised elsewhere within HMCTS.

33. HMCTS have provided estimates of the approximate amount of costs associated with dealing with debtor petition bankruptcies, shown at **Figure 3** below.

Figure 3: Table showing the cost to HMCTS of dealing with bankruptcy petitions, 2010/11

| | £m |
|-------------------|-------------|
| Staff costs | 4.5 |
| Judicial costs | 9.0 |
| Estate costs | 6.9 |
| Other costs | 5.0 |
| Capital Exp | 0.7 |
| Total cost | 26.1 |

34. During 2010/11, there were 47,117 debtor bankruptcy petitions filed at the courts. The unit cost of HMCTS in dealing with each petition is therefore £554 (£26.1m/47,117). Whilst it is accepted that the removal of these petitions would not result in any immediate cashable saving for HMCTS, the unit cost figure provides an indication of the economic resource utilised in administering each case that could be transferred to alternative activities within HMCTS. A fixed unit cost has been used throughout to reflect the high level of fixed costs associated with this work, based upon the information provided by HMCTS.

ANALYSIS OF OPTION 1: DEBTOR PETITION REFORM

35. Under option 1, we propose that applications by debtors for bankruptcy could be made either electronically on-line, or by post using paper application forms.

Anticipated costs

36. It is proposed that role of the Adjudicator would be a function undertaken within The Insolvency Service. The majority of those who replied to the consultation issued in 2009 agreed that it would be appropriate for The Insolvency Service to undertake this role. The Insolvency Service already has some experience of making orders administratively, as it has been considering applications for debt relief orders since their introduction in April 2009. It is anticipated that the IT that is used in this order making process will need to be adapted to deliver these proposals.

37. There will be some set up costs in developing a system to deliver the application process. These costs include the cost of developing and testing the IT software as well as licensing applications. Based upon the experience of setting up the debt relief order process, the Insolvency Service has estimated the overall cost of setting up the office of the Adjudicator

at around **£2 million**. This set up cost has been reflected in the anticipated bankruptcy application fee chargeable to debtors, and will therefore be fully recoverable.

38. The facility to apply for bankruptcy by way of an electronic application is a central aspect of the measures proposed and consulted on. Whilst the ability to make an application in hardcopy will remain at the outset (so as not to disadvantage those without access to IT), it is anticipated that take-up of the electronic application option will be in the region of 80%. The ability to receive and process applications electronically is a significant factor in enabling the Adjudicator to undertake the function at a much lower cost than the court are presently able to.

Operating/ongoing costs

39. The policy intention is for the new system to recover costs in full, so that those who use the system bear the cost of the service provided. This means that the fee payable by debtors seeking the debt relief provided by bankruptcy will need to be sufficient to cover the set-up and annual running costs of the office of the Adjudicator. As it is intended that the Adjudicator will provide a demand-led service, the operating costs are largely determined by the number of applications because the cost of processing an application includes both fixed costs and variable costs. This means that if case numbers increase, the cost of administering each application is likely to decrease. Conversely, should case numbers decrease below the level expected, the operating cost per case is likely to go up.

40. This impact assessment therefore considers the possible cost of (and therefore fee chargeable for) each debtor bankruptcy application within the range of possible case number scenarios outlined in the three models. These costs are based on an assessment of the likely work required to administer these cases, informed by the experience of dealing with applications for debt relief orders. The majority of the costs include staff and accommodation costs.

41. The effect on costs of lower levels of cases are analysed rather than the higher levels experienced in recent years. This is because the nature of the costs, which include an element of fixed costs, means that lower case levels equates to higher costs per case. Analysing lower annual case levels is therefore the most prudent approach.

Figure 4 : Estimated cost of Insolvency Service processing debtor petitions

| | Model A | Model B | Model C |
|--|------------|------------|-------------|
| Number of petitions | 30,000 | 22,500 | 15,000 |
| Annual costs | £1,700,000 | £1,400,000 | £1,200,000 |
| Set-up costs @ £2m | £2,000,000 | £2,000,000 | £2,000,000 |
| Likely application fee (inc. set up/ dep'n) | £70 | £80 | £107 |

42. Since it is anticipated that the function of the Adjudicator be operated on a full cost-recovery basis, set-up costs have been incorporated within the projected application fee to reflect recovery over a five-year period.
43. The reason the administrative process proposed can be run so much more cheaply than the existing court process is twofold. Firstly, moving to an administrative process provides scope to centralise the process at one location and to operate it with a relatively small team of (mostly) administrative staff, depending upon petition levels. This is in contrast to the current process where bankruptcy petitions may be presented at over 100 county courts around the country and in all those locations both administrative and judicial resource needs to be available to administer what is a paper process involving a court hearing in every case.
44. Secondly, by developing an electronic application process, it is possible to retain more control over the quality and completeness of the information the Adjudicator will require and there will also be scope for administrative efficiencies for the Insolvency Service as a result of information being received electronically on a case by case basis at the outset in most cases.
45. These figures in **Figure 4** above include the cost of introducing a telephone enquiry line and communications strategy. The enquiry line would be to offer guidance (not advice) to people completing bankruptcy application forms. The number, level of staff and cost of operating the new enquiry line team has also been assessed based on the cost and number of telephone assistance offered in the debt relief order application process.

Familiarisation costs

46. Individuals will need to know about and be aware of the key changes proposed by the new system. For example, debtors will need to know that they do not have to approach the court but can make an application on line, although most debtors will be made aware of the changes through seeking advice from debt advisors. The costs of familiarisation of the new administrative process are expected to be lower than the existing court based system, since there will be one central point of access with readily accessible guidance available. Further, since bankruptcy is for most a once in a lifetime event, the majority of individuals will benefit from the greater simplicity and accessibility of the proposed system with no extra familiarisation costs than would have otherwise been the case.
47. The Insolvency Service would be proactive in communicating with stakeholders and disseminating key information. Electronic communication, such as web-based newsletters and targeted emails, could be used for the launch. An early engagement strategy for involving key stakeholders in the development of the proposals will identify the main representative bodies who have an interest. These costs have been incorporated within the set up cost outlined above.

48. Debtors seeking the relief of bankruptcy are not businesses, but individuals – most often consumers who are unable to service credit liabilities. Businesses and other creditors wishing to present a bankruptcy petition against a debtor will not be affected by the proposals, as such there are not anticipated to be any familiarisation costs for business.
49. Those involved in the provision of debt advice may need to familiarise themselves with the new bankruptcy application process. However, since the process of bankruptcy will remain unchanged this is likely to affect only a very small proportion of the advice offered by debt advisors (most of which is provided by large organisations within the civil society sector). This is because the thrust of the debt advice will concern the appropriateness or otherwise of the various options open to the debtor, in terms of suitability by reference to the debtor's financial circumstances. The mechanism by which debtors may enter one of those options is therefore likely to constitute only a very small part of any advice given, if at all. The debtor is likely in most cases to be directed to the Adjudicator where information will be made available on how to complete a bankruptcy application. Given that the impact is estimated to be negligible it is deemed disproportionate to undertake an analysis to monetise these costs.

Benefits

50. The monetised benefits of the proposal are therefore represented by the difference in costs between the existing and proposed system, plus the additional benefits from further efficiencies. In addition, savings to business have been illustrated that may occur as a result of anticipated behavioural change on the part of debtors. These categories are considered in further detail below.

Resource savings for Government

HM Courts & Tribunals Service (HMCTS)

51. The proposed new system will have the greatest impact on HMCTS by removing all debtor petition bankruptcy applications from the courts. This will enable the courts to focus their time and resources on their primary function of dispute resolution and other civil procedure matters that do require judicial expertise. These savings represent resource savings rather than cashable savings realisable on implementation.
52. Presently, it costs HMCTS some £26.1m per annum to undertake the activity of processing debtor petitions through the court (**Figure 3** above). Using the average unit cost of £554 (based on the number of petitions presented in 2010/11), the difference in costs between the existing and proposed system under the three case forecast models is set out below.

Figure 5 : Cost of existing and proposed system

| | Model A | Model B | Model C |
|--------------------------------|--------------------|--------------------|-------------------|
| Number of petitions | 30,000 | 22,500 | 15,000 |
| Cost of existing system | | | |
| HMCTS @ unit cost £554 | £16,620,000 | £12,465,000 | £8,310,000 |
| Cost of proposed system | | | |
| Adjudicator | £1,700,000 | £1,400,000 | £1,200,000 |
| Reduction in costs | £14,920,000 | £11,065,000 | £7,110,000 |

Efficiency savings for the Official Receiver (Insolvency Service)

53. The Adjudicator will be in a position to provide good quality information to the official receiver once the order is made. Electronic applications should result in better quality information being provided at the outset, which should enable a swift start to the case administration process being carried out by the official receiver, which in turn should result in a better service to creditors in terms of prompt information and any dividend payment.

54. As it is proposed that the Adjudicator would be located within The Insolvency Service, orders made by the Adjudicator will be capable of being communicated very efficiently to official receivers, reducing the possibility of assets being dissipated between the making of the order and notification to the official receiver in circumstances where the debtor has realisable assets. Although the functions of the Adjudicator and the Official Receiver will be completely separate, the IT that each uses would be compatible, increasing the scope for administrative efficiencies.

55. The potential savings to the official receiver outlined below are based upon an analysis of the work undertaken by official receivers in relation to the receipt of debtor petitions from the courts. The savings represent an estimate of a reduction in resources required resulting from the provision of better, more timely information from the Adjudicator flowing from synergies in IT, which arise as a result of the introduction of the new system.

Figure 6 : Estimate of cost savings for the Official Receiver (OR)

| | Model A | Model B | Model C |
|--|---------|---------|---------|
| | | | |

| | | | |
|--------------------------------|-----------------|-----------------|-----------------|
| Number of petitions | 30,000 | 22,500 | 15,000 |
| Efficiency savings (OR) | £400,000 | £300,000 | £200,000 |

Illustrative savings for business resulting from debtor behavioural change

56. Whilst the proposals do not have any direct impact on business, since they only impact on individual debtors petitioning for their own bankruptcy, there are expected to be some indirect benefits for business as a result of anticipated behavioural changes on the part of debtors. As the processing of creditor bankruptcy petitions is also a cost that is incurred by HMCTS, there will also be cost savings resulting from an anticipated small reduction in the number of creditor petition bankruptcies.

57. As a result of the increased accessibility of bankruptcy following the removal of the court from the application process, it is anticipated that there will be an increase in the proportion of petitions for bankruptcy presented by debtors (compared to creditors). There is no expectation that overall bankruptcy numbers will increase. This is likely to lead to savings for business who will no longer wish to present bankruptcy petitions in those cases where debtors will in future initiate the process themselves.

58. The Scottish Government removed the courts from the initial stages of the sequestration (bankruptcy) process at the beginning of 2008/09. Since then, the proportion of debtor petitions presented in Scotland has increased markedly, from 40.8% in 2007/08 (the last year where applications were made through the court) to 70.5% in 2011/12. Over the same period creditor bankruptcy petitions reduced from 52.5% to 26.9%, as shown in **Figure 7** below. There is no evidence that the overall level of bankruptcies in Scotland increased as a direct result of the removal of the court from the bankruptcy process.

Figure 7: Percentage of debtor and creditor bankruptcy petitions in Scotland (Source: AIB)

| Year | Debtor (%) | Creditor (%) | Trustee (%) |
|----------------|-------------------|---------------------|--------------------|
| 2007/08 | 40.8 | 52.5 | 6.7 |
| 2008/09 | 37.4 | 54.4 | 8.2 |
| 2009/10 | 45.4 | 47.0 | 7.6 |
| 2010/11 | 51.2 | 42.5 | 6.3 |
| 2011/12 | 70.5 | 26.9 | 2.6 |

59. It is reasonable to assume that there may be an increase in the proportion of debtor petitions were the courts removed from the bankruptcy application process in England & Wales. Although the table above indicates that over a period of three to four years a substantial increase in the proportion of debtor petitions may be expected, at the time the courts were removed from the process in Scotland there were a far higher proportion of petitions presented by creditors than in England & Wales. As such it has been assumed that there will initially be only a modest 5% increase in debtor petitions in cases where otherwise creditors would have presented a petition.

60. This will result in savings for creditors and businesses who will no longer incur the costs of presenting a bankruptcy petition in those cases, and will result in savings for HMCTS in not dealing with as many creditor bankruptcy petitions as would have otherwise been the case. This is because debtors are more likely to have taken earlier action themselves as a result of the increased accessibility of a non-court based process.

61. Figures obtained by the Insolvency Service show that the median cost to non-Government petitioners of employing the services of a solicitor for creditor bankruptcy petitions is around £1,700, based upon a sample of legal bills submitted by petitioners in 18 bankruptcies between July and August 2010. In addition, a court fee of £220 is payable by creditors presenting a petition, along with a deposit of £700 due to the Official Receiver (which may potentially be recoverable from the estate if there are sufficient realisations). Where creditor bankruptcy petitions are presented by HMRC, the court fee and deposit to the Official Receiver would also be payable. An internal cost would also arise to HMRC in respect of legal work undertaken in presenting a petition analogous to the £1,700 solicitor fees incurred by other creditors.

62. Figures provided by HMCTS indicate that the cost to them of processing creditor bankruptcy petitions in 2010/11 was around £6.7m. Based upon the number of creditor bankruptcy petitions presented in 2010/11 of 17,493, the unit cost of dealing with each petition is £383 (£6.7m/17,493). This may reflect the lower administrative costs in dealing with creditor bankruptcy petitions, as unlike in debtor petition cases resources are not tied up liaising with debtors and in providing assistance in the completion of the necessary forms. As with the unit cost for debtor petition cases, this unit cost has been assumed to be fixed throughout, to reflect the high level of fixed costs associated with this work.

63. For the purposes of this impact assessment, it has been assumed that no recoveries are made by creditors in respect of the costs associated with presenting a bankruptcy petition, and that the expected 5% increase in the proportion of debtor petitions would otherwise have resulted in creditors presenting petitions in those cases. **Figure 8** below illustrates the potential savings resulting from this behavioural change on the part of debtors. Against these savings, the extra cost to debtors of petitioning in an additional 5% of cases has been deducted.

Figure 8 : Potential increase in proportion of debtor petitions and associated savings

| | Model A | Model B | Model C |
|---|------------|------------|------------|
| Number of petitions | 30,000 | 22,500 | 15,000 |
| Assumed 5% increase in debtor petitions | 1,500 | 1,250 | 750 |
| Savings | | | |
| Solicitors fees (£1,700) | £2,550,000 | £2,125,000 | £1,275,000 |

| | | | |
|--|-------------------|-------------------|-------------------|
| HMCTS resource cost (£383) | £574,500 | £478,750 | £287,250 |
| OR deposit (£700) | £1,050,000 | £875,000 | £525,000 |
| Less: extra cost to debtors of petitioning in 5% of cases @ £70/£80/£107 | (£105,000) | (£100,000) | (£80,250) |
| Less: OR deposit incurred by debtors in 5% of cases @ £525 | (£787,500) | (£656,250) | (£393,750) |
| Total behavioural change savings | £3,282,000 | £2,722,500 | £1,613,250 |

64. In addition to the savings identified above, there is also an indirect benefit associated with the increased accessibility to bankruptcy and earlier debt relief sought by debtors. This may result in a reduced reliance on ongoing credit facilities and reduced losses for creditors through debtors seeking an earlier resolution to their financial problems. Whilst it is difficult to provide any reliable estimate of the impact of such a behavioural change, the cumulative effect of many debtors seeking earlier debt relief could result in a significant amount less credit being incurred in periods leading up to bankruptcy, providing further savings to business.

Summary of total potential savings

65. The total monetised savings therefore comprise the difference in costs between the existing and proposed system, and additional efficiency savings for Government (Official Receiver). These are summarised in **Figure 9** below.

Figure 9 : Summary of total potential annual savings

| | Model A | Model B | Model C |
|--------------------------------|--------------------|--------------------|-------------------|
| Number of petitions | 30,000 | 22,500 | 15,000 |
| Difference in costs | £14,920,000 | £11,065,000 | £7,110,000 |
| Efficiency savings - OR | £400,000 | £300,000 | £200,000 |
| Total | £15,320,000 | £11,365,000 | £7,310,000 |

66. The table indicates potential annual resource savings in the range of **£7.3 to £15.3 million**. The savings represent economic resources that could be more efficiently utilised elsewhere, particularly in relation to the savings flowing from the removal of debtor petition bankruptcies from the courts, but do not represent cashable savings that would be released upon implementation.

Allocation of benefits

67. Whilst **Figure 9** above indicates the total potential resource savings, the specific potential impact on individuals and business is considered further below, reflecting the benefits to these groups flowing from the removal of debtor bankruptcy petitions from the courts.

Individuals (debtors)

68. Under the new process, there will no longer be a court fee, but an application fee which we expect will be lower than the current court fees for bankruptcy petitions (£175). On average, the amount paid by debtors is expected to be less in the mid-range scenario. This saving therefore represents a benefit for those debtors that would otherwise have had to pay the existing court fee in full.

69. It is proposed that there be no remission of application fees under the new process, and therefore the full amount of the cost will be recovered from the applicant. A system of fee remissions currently exist in the High Court and County Courts to ensure access to the courts for those who have difficulty or are unable to pay a court fee. A strict test is applied before fee remissions are allowed.

70. This means that those applicants, specifically debtors applying for their own bankruptcy, who would previously have been relieved of the obligation to pay some or all of the court fee of £175, will have to pay the full application fee under the new system. This reflects the policy intention that the person who benefits from the debt relief provided by bankruptcy should pay for that benefit. We do not expect there to be any reduction in the number of debtors applying to put themselves into bankruptcy as a result of the removal of fee remissions, for the following reasons:

- The estimated application fee is anticipated to be considerably lower than the present court fee (£80 under the model of 22,500 petitions). Provided that assumption proves correct, it is only those debtors who receive remission of more than half of the court fee who would pay more.
- Even now the fee remissions process only applies to the court fee of £175 because there can be no remission of the larger bankruptcy deposit (presently £525) which must still be paid in full by all debtors. This change of policy will thereby only impact upon 25% of the total fees payable.
- A new option of paying all of the fees (application fee and deposit) by instalments is proposed.
- For those individuals with relatively low levels of debt (liabilities of less than £15,000) and no income or very limited assets, the Debt Relief Order process provides an alternative and cheaper form of debt relief (at a cost of £90).

71. The changes to the debtor petition bankruptcy process could otherwise benefit debtors by removing an inappropriate barrier for those for whom bankruptcy is the right solution to their debts but who are put off applying because of the current requirement to attend court.

72. In October 2009, the Money Advice Trust published a report on debt and mental health³ which concluded there was “*plausible evidence from longitudinal research that indebtedness is often subsequently followed by mental health problems*”. By obtaining faster access to debt relief, the debtor should be relieved of the financial, psychological and physiological consequences of over-indebtedness in a shorter period of time. Debtors who petition for their own bankruptcy would no longer be required to attend court in order to file their petitions and obtain their bankruptcy order. Electronic or paper submissions could reduce the stigma associated with attending court and save time, as well as reducing the burden faced by some debtors associated with travelling to court.

73. The table below compares the cost to debtors of the current system with the cost of the proposed system, using the range of possible fees at **Figure 4 above**. These fees would be payable in addition to the deposit of £525 (which is not changing) in those cases where an order is made.

Figure 10: Table showing the application costs for debtors under the current system compared with the application costs under the proposed administrative system

| | Model A | Model B | Model C |
|---|-----------------|-----------------|-------------------|
| Number of petitions | 30,000 | 22,500 | 15,000 |
| Present system | | | |
| Cost to debtors of existing fee £175 x 50% remissions | £2,625,000 | £1,968,750 | £1,312,500 |
| Proposed system | | | |
| Anticipated new fee | £70 | £80 | £107 |
| Cost to debtors | £2,100,000 | £1,800,000 | £1,605,000 |
| Benefit / (cost) to debtors | £525,000 | £168,750 | (£292,500) |

74. The table reflects the fact that at lower levels of case numbers, those debtors who would previously have received either a partial or full remission of the court fee, will in the future be expected to make a contribution towards the costs of processing their petition. As indicated above, this reflects the policy intention that the person who benefits from the debt relief provided by the bankruptcy process should pay for that benefit.

³ http://www.infohub.moneyadvicetrust.org/resource.asp?r_id=468

Business

75. As outlined above, the potential savings to business are expected to result from a change in behaviour on the part of debtors, who will be more inclined to initiate their own bankruptcy proceedings thus leading to savings for business who will no longer incur the cost of presenting bankruptcy petitions against debtors in those cases.

76. The savings to business are therefore illustrated by the reduction in creditor bankruptcy petitions by 5% and elimination of costs associated with presenting those petitions. They are summarised below in **Figure 11**, but have not been monetised in this assessment.

Figure 11: Table showing savings for business resulting from debtor behavioural change

| | | | |
|---|-------------------|-------------------|-------------------|
| Number of petitions | 30,000 | 22,500 | 15,000 |
| Assumed 5% increase in debtor petitions | 1,500 | 1,250 | 750 |
| Solicitors fees (£1,700) | £2,550,000 | £2,125,000 | £1,275,000 |
| HMCTS court fee (£220) | £330,000 | £275,000 | £165,000 |
| OR deposit (£700) | £1,050,000 | £875,000 | £525,000 |
| Savings for business | £3,930,000 | £3,275,000 | £1,965,000 |

Government

77. Savings to Government result primarily from the removal of all debtor petition bankruptcy applications from the courts. This will enable the courts to focus their time and resources on their primary function of dispute resolution and other civil procedure matters that do require judicial expertise, allowing the resource to be more efficiently deployed elsewhere.

78. There are also resource savings for HMCTS in the small reduction in creditor bankruptcy petitions flowing from behavioural change on the part of debtors, and efficiency savings for the Official Receiver resulting from synergies with the Adjudicator.

Summary

79. Taking into consideration the costs and benefits of each choice, option 1 is the preferred option as it is most likely to achieve the policy objective of improving accessibility to bankruptcy, whilst minimising the burdens on the courts and maximising the potential for savings to be made from creating a streamlined administrative process.

80. Total potential annual cost savings are in the range of **£7.3 to £15.3 million**, representing economic resources that could be more efficiently utilised elsewhere, primarily in relation to the savings flowing from the removal of debtor petition bankruptcies from the courts. The savings do not represent cashable savings that would be released upon implementation. Beneficiaries of the proposal are Government, business and individuals.

81. As the new administrative system will be a demand-led process, the final fees set will depend on the forecasted volume of cases received by the Adjudicator.
82. The level of uptake for an online system, particularly for individual debtors petitioning for their own bankruptcy, is unknown but work carried out by the Insolvency Service in 2007 suggests that 80% of debtors who had petitioned for their own bankruptcy in the past would have considered an electronic application process had it been available. For the purposes of this impact assessment it has therefore been assumed that 80% of applications will be received electronically. However, if the uptake is significantly less than that, the cost of paper applications - which are higher than electronic applications, but currently absorbed in the overall fee calculations, may increase the overall proposed fee level.
83. The proposals contained in this consultation document are consistent with wider reforms to the civil courts in England and Wales led by the Ministry of Justice. The realisation of any benefits outlined in this consultation document, particularly those to HMCTS, are dependent on overall changes to the court services and resource allocation within the MOJ and HMCTS.

One in One Out (OIOO)

84. Under the 'One In, One Out' rule, measures that have a net cost to business must have a measure or measures of equivalent cost removed in order to be implemented. Whilst this proposal does not have any direct cost on business, since debtors petitioning for their own bankruptcy are in the vast majority of cases individual consumer debtors experiencing over-indebtedness, there may be some very modest familiarisation costs for those involved in the provision of debt advice, mostly provided by large organisations within the civil society sector. As such, the measure falls within the ambit of One In One Out, and is classified as an 'in' at zero net cost, in line with the BRE OIOO methodology. This is an "In" where the EANCB has not been scored as the cost is expected to be negligible and it is deemed disproportionate to undertake an analysis to monetise it.

SPECIFIC IMPACT TESTS

1. Competition Assessment

The proposed policy will have no impact on competition as the work involved in dealing with petitions is merely being moved from one government department (HM Courts and Tribunals Services) to a person or person under the control of the Secretary of State.

2. Small Firms Impact Test

The proposed policy will have no impact on small firms.

3. Justice

The proposed policy will have no impact on Legal Aid, as it is not available to fund bankruptcies. It is proposed that there be new criminal offences, for knowingly or

recklessly making a false representation or omission in providing information in connection with a bankruptcy application.

4. Sustainable Development

The proposed policy will have no direct impact on sustainable development.

5. Greenhouse Gas Assessment

The proposed policy will have no direct impact on greenhouse gas assessments.

6. Other Environment

While the implications of this proposed system may not be so significant as to warrant a detailed impact assessment for “Sustainable Development” or “Carbon Assessment”, the following benefits would flow from the system:

- Reduction in the use of paper, in particular due to the use of an electronic method of filing for a bankruptcy petition
- Reduction in levels of unwanted paper
- Reduction in the need for travel

7. Health

It is anticipated that the proposed system will have beneficial effects on the health of debtors. The adverse psychological and physiological effects of stress relating to financial circumstances are well documented, but by removing potential delays in the petition process and removing the stigma associated with attending court, debtors will be able to access debt relief procedures more quickly. In this way, debtors will be relieved of some of the stress of their financial situation more quickly than under the current debtor petition system.

8. Equality Impact Assessments

The proposed system will not have an adverse or disproportionate effect on any person as a consequence of race, ethnic origin, religion, gender or sexual orientation. The proposal provides for electronic submission of debtor bankruptcy applications, but any person who, for whatever reason, is unable to participate in this form of submission will initially still be able to submit their application on paper via the post. The forms will be available to download from The Insolvency Service website. There will be a telephone helpline, funded from the application fee, to help any applicants to complete their forms.

9. In addition, the removal of the requirement to attend at courts with insolvency jurisdiction in order to file a bankruptcy petition should benefit people who are unable to travel to court due to disability, cost of travelling, inability to take time off work or any other commitments which may prevent attendance at court.

10. Human Rights

The proposed system does not impact upon any human rights issues.

11. Rural Proofing

Under the current system, debtors and creditors or their representatives must attend at the appropriate court with insolvency jurisdiction in order to present a petition. The forms required to petition can be obtained from the court, printed from The Insolvency Service

website or completed electronically on The Insolvency Service website and then printed. However, in all cases, the debtor must attend court in order to file the papers. The requirement to attend court personally means that, in some areas of the country, debtors must travel considerable distances in order to file their petition at a court with insolvency jurisdiction.

In some rural areas, there may be a lack of direct public transport and therefore debtors without a car may experience difficulty in attending court. Similarly, even if public transport is available, the cost in attending court may prove onerous for some petitioners and respondents, particularly individual debtors.

12. The proposed system would alleviate the problems of access to court with insolvency jurisdiction by removing the courts from the debtor petition process. Debtors will be able to choose either to electronically submit their applications via an online service or initially to submit their petitions via post, therefore removing the requirement of attendance at court and the access and costs issues associated with travel to court.