

 Regulatory Policy Committee	Validation of the One-in, Two-out Status and the Net Direct Impact on Business	
Validation impact assessment (IA)	Enabling liquidators and administrators to assign certain rights to third parties	
Lead department/agency	Department for Business, Innovation and Skills	
IA number	BIS INSS007	
Origin	Domestic	
Expected date of implementation	1 October 2015 (SNR10)	
Date of regulatory triage confirmation	N/A: Red Tape Challenge	
Date submitted to RPC	17 April 2014	
Date of RPC validation	14 May 2014	
RPC reference	RPC14-BIS-2044	
Departmental assessment		
One-in, Two-out status	Zero Net Cost	
Estimate of the equivalent annual net cost to business (EANCB)	N/A	
RPC assessment	VALIDATED	
RPC summary comments		
<p>The IA is fit for purpose. The assessment of the impacts is reasonable to justify the Department's classification that the proposals are in scope of One-in, Two-out but with a zero net cost.</p> <p>While the benefits cannot be estimated accurately, the IA uses a 'break even' analysis to demonstrate that the benefits from just two assignment cases each year would be sufficient to off-set the one-off familiarisation costs of £0.93 million.</p>		
Background (extracted from IA)		
What is the problem under consideration? Why is government intervention necessary?		
<p><i>Currently, a liquidator may bring against the directors of an insolvent company a civil claim for fraudulent or wrongful trading. An administrator or liquidator might do the same to recover property where there has been a preference given, a transaction at an undervalue, or an extortionate credit transaction. These actions can be brought only by the liquidator in respect of fraudulent trading and wrongful trading, and by the administrator or the liquidator ("the officeholder") in respect of the other causes of action. They are not capable of assignment to a third party. However, not many of these actions have been taken forward in the past. Government intervention is required to ensure that, where there has been misconduct, all opportunities are given to officeholders to recover monies from those individuals who cause loss to creditors (particularly unsecured creditors) by taking advantage of the privilege of limited liability.</i></p>		

What are the policy objectives and the intended effects?

To give the officeholder the maximum opportunity and flexibility to take forward any potential claims and to get the best value for creditors. The intended effect of the policy is to increase confidence in the insolvency and enforcement regime by using the current laws to increase the likelihood of miscreant directors being held accountable for their actions and being required to compensate creditors in cases where they have acted inappropriately.

Proposals

To enable liquidators and administrators to assign to third parties certain rights of action that, currently, only they can bring under the Insolvency Act 1986; and to extend the right to bring fraudulent and wrongful trading actions to an administrator. The proposals would also include strengthening the information gateways between liquidators and official receivers and the Insolvency Service to target cases better where financial redress is available.

The proposals would enable unsecured creditors to benefit from the proceeds of the sale and allowing for more officeholder claims to be pursued. The Department anticipates that the incipient market would develop further, and increase the prospect of actions being taken against miscreant directors.

RPC comments

The proposals would enable liquidators and administrators to assign to third parties certain rights of action that, currently, only they can bring under the Insolvency Act 1986; and to extend to an administrator the right to bring fraudulent and wrongful trading actions. This would enable unsecured creditors to benefit from the proceeds of the sale and allow for more office holder claims to be pursued.

The IA explains that the costs to business are limited to one-off costs to insolvency practitioners and lawyers. These are estimated at £0.93 million. This is calculated on the basis of approximately 1,645 insolvency practitioners and lawyers taking between one and two hours each, at an hourly wage rate of between £146 and £409, to familiarise themselves with the change to legislation.

The main beneficiaries of the proposals are creditors and insolvency litigation firms who will benefit from a transfer from miscreant directors. Based on an illustrative example, the benefits are estimated to average £60,000 (net of legal costs) in each case.

The total value of the benefits cannot be forecast accurately as the number of additional claims that the proposals would allow to be taken forward is unknown as neither the Department nor stakeholders can forecast how this new market would develop. The Department has therefore used a break-even analysis to demonstrate that the benefits from just two assignment cases each year would be sufficient to off-set the one-off familiarisation costs of £0.93 million.

This supports the Department's conclusion that the proposals would be net beneficial to business. The Department's classification that the proposals are in scope of One-in, Two-out but with a zero net cost is, therefore, reasonable and consistent with paragraph 1.9.12 of the Better Regulation Framework Manual (July 2013).

Signed

A handwritten signature in black ink, appearing to read "Michael Gibbons", with a long horizontal stroke underneath.

Michael Gibbons, Chairman