Title: Repeal of the 'early discharge from bankruptcy' provision	Impact Assessment (IA)
IA No: BIS0302	Date: 10/02/2012
Lead department or agency: The Insolvency Service, executive agency for the Department of Business, Innovation and Skills	Stage: Final
	Source of intervention: Domestic
	Type of measure: Primary legislation
Other departments or agencies: None	Contact for enquiries: maria.isanzu@insolvency.gsi.gov.uk

Summary: Intervention and Options

RPC Opinion: Awaiting Scrutiny

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, One-Out?**	**Measure qualifies as**
£23.7m	£5.7m	£-0.6m	Yes	OUT

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

Early discharge was introduced to promote the early rehabilitation of non-culpable bankrupts who cooperate with the official receiver and to reduce the stigma attached to bankruptcy. Instead, the process has introduced considerable financial and administrative burdens into the bankruptcy case administration process and has failed to achieve its intended aims. Government intervention is necessary to amend primary legislation.

What are the policy objectives and the intended effects?

The objective of this proposal is to reduce the financial and administrative burdens early discharge imposes on business, The Insolvency Service, HM Revenue and Customs and HM Courts and Tribunals Service.

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

The policy options considered are:

Option 0: Do nothing - this would make no change to the current regime and the costs in administering early discharge would remain, with little benefit in return.

Option 1: Repeal the 'early discharge' provision - this would introduce savings and consistency into the bankruptcy case administration process. Discharge would be automatic for the majority of bankrupts.

Option 1 is the preferred option as it would reduce the burdens on business, the Insolvency Service, HM Revenue and Customs and HM Courts and Tribunals Service.

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

Does implementation go beyond minimum EU requirements?			No		
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:** N/A	**Non-traded:** N/A	

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: 15/5/12

Summary: Analysis & Evidence

Policy Option 1

Description: Repeal of the 'early discharge from bankruptcy' provision

FULL ECONOMIC ASSESSMENT

Price Base Year 2010	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 17.7	**High:** 27	**Best Estimate:** 23.7

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.0		0.0	**0.0**
High	0.0		0.0	**0.0**
Best Estimate	0.0		0.0	**0.0**

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

There are no familiarisation or set up costs for business, the Insolvency Service, HMRC and HMCTS in repealing early discharge.

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

The possibility of an earlier discharge would be removed for bankrupts, which could be considered a 'cost' for bankrupts. However, only 15% of bankrupts surveyed in the 2008 evaluation carried out by the Insolvency Service thought that a discharge period of less than one year was appropriate.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0.0		2.1	**17.7**
High	0.0		3.1	**27.0**
Best Estimate	0.0		2.8	**23.7**

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

Based on 2009-10 case numbers, business should see annual monetised benefits of £0.7 million; The Insolvency Service should see benefits of £1.1 million; and OGDs (HMCTS and HMRC) should see benefits of £1.0 million by removal of the early discharge process. The figures in the cost and benefit analysis are based on 2010 constant prices compared to the equivalent annual benefit of £0.6 million which is based on 2009 constant price calculations.

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

Both the evaluation report and the consultation exercise highlighted that for stakeholders, including bankrupts and creditors, having a single automatic discharge period provides transparency and clarity in the bankruptcy regime, and is highly desirable. Evaluation of the early discharge provision identified a non-monetised benefit of the full discharge period as bankrupts being allowed sufficient time to 'learn' from bankruptcy.

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5

The costing from 2006/7 cases, which totalled 64,610, have been applied to case numbers in 2008/9 and 2009/10 . An assumption has also been made that salaries and the cost of consumables has remained the same, although inflation uplift has been considered in the calculations contained in this impact assessment. The range of case numbers does offer a broad range of possible case scenarios, but if bankruptcy numbers were to go up or down, so too would the estimated costs and benefits.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: £0.0	**Benefits:** £0.6	**Net:** £0.6	Yes	OUT

Evidence Base (for summary sheets)

INTRODUCTION

1. In November 2009 The Insolvency Service, an executive agency of the Department for Business, Innovation and Skills, put forward the proposal to repeal the early discharge provision contained in the Insolvency Act 1986. This proposal was contained in the consultation paper, '*Reforming Debtor Petition Reform and Early Discharge from Bankruptcy*'[1]. This is the final stage impact assessment for the proposal to remove early discharge from bankruptcy.

PROBLEM UNDER CONSIDERATION

Bankruptcy and Discharge

2. Bankruptcy is a way of dealing with debt. The making of the order at court marks the beginning of the bankruptcy process which, while freeing the individual from overwhelming debt, also imposes consequences and restrictions on the bankrupt.

3. On the making of the bankruptcy order, an official receiver is also appointed to administer the bankruptcy and an insolvency practitioner, in instances where there are assets, may also be appointed as trustee to realise and share the bankrupt's assets fairly amongst his or her creditors.

4. Discharge from bankruptcy releases the bankrupt from most[2] of his/her debts owing at the time the bankruptcy order was made[3] and lifts the bankruptcy restrictions[4]. Discharge usually takes place one year from the date of the bankruptcy order and occurs automatically unless the official receiver or the trustee in bankruptcy asks the court to suspend automatic discharge[5]. This happens where the bankrupt has failed to comply with his or her obligations imposed by the Insolvency Act 1986 (the Insolvency Act).

5. Discharge may also occur earlier where enquiries into the affairs of the bankrupt have been concluded. The official receiver may file a notice of early discharge at the court and the bankrupt will be discharged on the date this notice is filed.

6. The policy intention is to remove the ability of bankrupts to get early discharge from bankruptcy as it is a costly process to administer with few benefits for bankrupts.

Background to early discharge

7. Prior to 2004, bankruptcy lasted for three years and then the bankrupt would in most cases be automatically discharged. The Enterprise Act 2002 (Enterprise Act) introduced a provision to reduce the duration of bankruptcy to 12 months, and also introduced the possibility for discharge to occur earlier.

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[1] http://www.insolvencydirect.bis.gov.uk/insolvencyprofessionandlegislation/con_doc_register/Debtor%20Petition%20Reform%20Final%20Nov%2009.pdf

[2] Rule 12.3 Insolvency Rules 1986

[3] Sections 279 and 281 of the Insolvency Act 1986

[4] Unless the bankrupt is the subject of a bankruptcy restriction order or has given a bankruptcy restriction undertaking – see Rule 12.3 Insolvency Rules 1986

[5] Section 279(3) Insolvency Act 1986

8. The individual insolvency provisions introduced by the Enterprise Act were designed to distinguish between culpable and non-culpable bankrupts - those who had wound up in an insolvent position through no fault of their own. The intention was for those bankrupts who posed no risk to the public or commercial community; where all investigative and administrative matters had been dealt with; and where the bankrupt had co-operated fully with the official receiver[6], they would be allowed a 'fresh start' sooner than one year. To this effect the individual insolvency provisions in the Act had two broad aims:

   - to reduce the fear of failure, and
   - to reduce the stigma of bankruptcy

9. For those cases where these grounds were not satisfied, the bankruptcy period was intended to remain at one year, after which the bankrupt would usually be discharged automatically.

10. An evaluation of the provisions introduced by the Enterprise Act was carried out in 2008[7]. The evaluation found that in contrast to some of the other personal insolvency provisions, early discharge did not have the desired impact of reducing the stigma of bankruptcy and encouraging early rehabilitation.

The Early Discharge Process

11. Unlike automatic discharge which takes place on the expiration of time, there is a lengthy administrative process to enable early discharge to take place to ensure various checks and safeguards are in place (see diagram 1). These include sending notice to creditors and trustees of the official receiver's intention to file a notice for early discharge. This notice to creditors and trustees is a safeguard which provides business with an opportunity to voice their objections, but imposes additional costs to the official receiver, the court, business and creditors which are not present under automatic discharge.

12. The Insolvency Service also introduced internal guidelines for early discharge. In addition to the official receiver waiting three months after issuing the report to creditors before starting the early discharge process (in order to ensure all relevant facts are likely to come to light), the official receiver would also carry out a final income review in appropriate cases. This mechanism provides one last opportunity to assess the bankrupt's income and identify any potential surplus income which could be paid into the bankruptcy estate for the benefit of creditors before early discharge is granted.

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[6] See comments by Lord Sainsbury of Turville on 30 July 2002 during House of Lords Committee stage of the Enterprise Act. Hansard column

[7] http://www.insolvencydirect.bis.gov.uk/insolvencyprofessionandlegislation/policychange/policychange.htm

Income review and early discharge

13. An income review is carried out in all bankruptcy cases as soon as the official receiver receives information from the bankrupt on his or her financial position. This is because, as a consequence of relieving a debtor of unmanageable debt problems, a bankrupt who no longer has to make payments to the majority of his/her creditors may have a surplus income beyond that needed to meet the reasonable domestic needs of him/herself and his/her family. The bankrupt is asked to complete a questionnaire relating to his/her monthly income and expenditure. Information from the questionnaire is used by the official receiver to make an assessment of the bankrupt's financial position. The official receiver or trustee can apply for a court order requiring the bankrupt to pay any surplus income into the bankruptcy estate. Such an order is known an **Income Payments Order** or IPO.

14. The Enterprise Act extended this idea by introducing the **Income Payments Agreement** (IPA), a voluntary system which creates a formal binding agreement between the official receiver or trustee and the bankrupt. In effect, the IPA works in the same way as an IPO but removes the need for the official receiver or trustee to make an application to court. As with IPOs, the agreement lasts for no more than 36 months. A trustee or the official receiver would always in the first instance seek an agreement before applying to court for an order.

15. A further review is currently carried out in those cases identified for early discharge. This involves sending a letter to the bankrupt to confirm that there have been no changes in circumstances since the making of the bankruptcy order which mean that an IPO/A may now be appropriate. If the bankrupt fails to respond to this letter within 21 days, the early discharge process stops.

16. Early discharge therefore does provide a trigger for the official receiver to carry out a further review of the bankrupt's income. In 1-2% of all potential early discharge cases, the information provided by the bankrupt leads to surplus income being identified and recovered.

17. As this income review is an internal non statutory process which has potential to generate further net benefits for the bankruptcy estate, the policy intention is that, should the statutory provision of early discharge be repealed, the procedural income review would be maintained in all appropriate bankruptcy cases. Existing statutory provisions oblige the bankrupt to provide the official receiver and/ or trustee with information, including changes in his or her financial position[8]. If the bankrupt fails to comply with any of his/ her obligations imposed by the relevant parts of the Insolvency Act 1986, the official receiver can apply to court to suspend the bankrupt's discharge.

18. The current legislation therefore compels the bankrupt to cooperate and respond to the income review. The Insolvency Service believes this current legislation is sufficient to ensure a positive response rate to the further income review and, with the continuation of the internal income review process, we would anticipate there would be no net loss in returns for creditors. Thus, for the purpose of this impact assessment, only the costs and benefits from the statutory element of the early discharge process will be analysed as the internal process is being retained.

Outcome of previous consultations on proposals to repeal early discharge

19. Responses to the 2009 consultation were unanimous in support of removing early discharge. Stakeholders welcomed the repeal, citing the high costs of administering the provision far exceeding any benefit. The Institute of Credit Management believed *'there are no benefits to early release, and*

[8] Sections 291(4) and 333(2) Insolvency Act 1986

the costs are ridiculous', while Christians Against Poverty *'[cannot] see any tangible benefit which could justify the costs to The Insolvency Service or to creditors'.*

20. For the Finance and Leasing Association and HSBC Bank Plc, both creditor organisations, repeal of the early discharge provision is necessary *'to bring consistency to the discharge period'*. The British Bankers' Association added that repeal would bring simplicity to the bankruptcy process.

21. In the same consultation we also invited stakeholders to provide further data to help quantify the costs and benefits of early discharge. Only Max Recovery was able to quantify the potential savings to their business of removing early discharge. They also commented that they had never objected to an early discharge, and added *'[...] although it was a policy worth trying, it is clear that it is not valued by debtors and it builds significant costs into the process for both creditors and official receivers'.*

22. Many, including HM Revenue and Customs (HMRC), acknowledged that there were cost savings to be made to their business from not having to deal with the paperwork generated from the early discharge process.

23. As the provision for early discharge is contained in the Insolvency Act, the proposal to repeal the provision can only be taken forward through primary legislation. The policy intention therefore is to take this proposal forward and repeal early discharge when a legislative vehicle becomes available.

RATIONALE FOR INTERVENTION

24. Government market failure is created by the current legislation which provides for early discharge from bankruptcy. This legislation has not had the desired impact or achieved its aims. The legislation has brought additional costs in the case administration regime which outweigh any benefits of early discharge. Government intervention is necessary to amend this primary legislation.

POLICY OBJECTIVE

25. The policy objective is to reduce the financial and administrative burdens on business and government by making the bankruptcy process in the United Kingdom as efficient, consistent and transparent as possible. Removing the ability for bankrupts to get early discharge will contribute to this. Under these proposals, the earliest bankrupts would be able to be discharged is one year after the making of the bankruptcy order.

POLICY OPTIONS

Option 0: Do Nothing

26. This option makes no changes to the current system and would mean that where the official receiver is satisfied that the administration of the case has been concluded, s/he would be required to consider sending notice to the court of the bankrupt's early discharge. This option would involve costs borne out of statute.

Option 1: Repeal the 'Early Discharge from Bankruptcy' Provision

27. This option would remove the possibility of bankrupts obtaining early discharge. Instead, all bankrupts would be automatically discharged after 12 months providing they are not subject to any

restrictions or their discharge has not been suspended. The cost/benefit calculations are set out in full in annex 1.

COST AND BENEFIT ANALYSIS

28. The costs and benefits used in this report are based on actual case numbers from 2004/5 to 2009/10. Over the last six years bankruptcy case numbers have ranged fairly widely, which offers a broad scale to consider costs and benefits flowing from the proposal. With the exception of case numbers and postage costs, the remaining figures (salaries, cost of paper, consumables) have been kept the same throughout the periods being considered and adjustments have been made to take into account inflation using the consumer price indices for each respective year.

Current Costs of Option 0

29. Under the existing early discharge regime, the official receiver is required to file a report at court stating that further investigation is unnecessary or concluded in order for the bankrupt to be granted early discharge[9]. The bankrupt is discharged when that notice is filed at court.

30. It was also agreed when the Enterprise Act was before Parliament that, prior to filing any notice for early discharge at court, the official receiver would notify all creditors, and any other trustee, of the intention to do so[10]. This ensures a proper balance between the needs of bankrupts and the rights of their creditors. Only after the creditor or trustee has had the opportunity to raise any objections or to make representation and any issues resolved can the official receiver then decide if early discharge is appropriate (see diagram 1). There are costs to the Insolvency Service in sending out these notices and costs to business and the court in responding to and/or filing these notices.

31. Analysis of the Insolvency Service's records shows that since the early discharge provision was introduced, the following number of early discharges have been granted:

Table 1: Table showing the number and percentage of early discharges granted since 2004/5 until 2009/10.

	2004/5	2005/6	2006/7	2007/8	2008/9	2009/10
Total number of bankruptcy orders made	37,562	53,386	64,610	62,357	72,060	72,480
Number of early discharges granted	18,790	23,126	27,239	23,800	26,889	25,624
% of bankruptcies where early discharge granted	50%	43%	42%	38%	37%	35%

Source: The Insolvency Service

32. Table 1 shows the proportion of bankrupts being granted early discharge is declining. In 2004/5 half of all bankrupts obtained early discharge, compared to just over one-third in 2009/10 .

[9] Section 279(2) of the Insolvency Act 1986
[10] See comments by Lord Sainsbury of Turville on 30 July 2002 during House of Lords Committee stage of the Enterprise Act. Hansard column

33. In 2004/5 the official receiver sent notice of his intention to apply for early discharge in around 19,000 cases. As each bankrupt has, on average, seven creditors[11], this equates to around 133,000 letters sent to creditors that year to begin the early discharge process.

34. In addition to creditors, the official receiver also sends notice of his intention to apply for early discharge to any insolvency practitioner appointed as trustee (see annex 1 tables 1 (b) – 6 (b)).

35. Taking into account the costs involved in sending notices (cost of paper, consumables, postage and time, between 2004/5 and 2009/10 it cost the official receiver, between **£0.8 - 1.2 million** per year[12] to carry out his statutory obligation to administer early discharge.

36. Using 2004/5 case numbers, creditors objected (and therefore incurred a cost in actively *doing* something positive to stop early discharge) in approximately 5% of cases where the official receiver sent notice of his intention to apply for early discharge. This cost to business in receiving and dealing with early discharge notices has been estimated as ranging between **£0.5 - £0.8 million** within the last six years (see annex 1).

37. HM Revenue and Customs (HMRC) as a major and frequent creditor and HM Courts and Tribunals Service (HMCTS) who are responsible for receiving and filling the notice also incur a cost in the process, estimated in table 2 to be between **£0.8 - £1.2 million** between 2004/5 – 2009/10 (see annex 1 tables 1(c) - 6 (c) for calculations)

38. In total, the estimated cost of processing the statutory elements of early discharge, based on case numbers from 2004/5 to 2009/10, is **£2.1 - £3.2 million** for government and business. This total takes into account the CPI inflation in each financial year, as summarised in table 2 (see annex 1 for the full working out and table 7 in annex 1 for a summary).

Table 2: Summary of the cost to the official receiver, business and other government departments in complying with the early discharge provision in 2009/10 constant prices (£).

	1	2	3	4	5	6
	2004/5	2005/6	2006/7	2007/8	2008/9	2009/10
Cost to official receiver (from statute)[13]	773,602	987,091	1,199,763	1,071,174	1,185,554	1,132,215
Cost to business[14]	500,288	629,416	757,505	676,208	666,275	707,319
Cost to other government departments[15]	777,358	982,042	1,183,565	1,056,535	1,169,399	1,107,921
Total estimated cost of early discharge	2,051,248	2,598,549	3,140,833	2,803,918	3,098,120	2,947,249

Benefits of Option 0

[11] The average is the median of the number of creditors in the bankruptcy cases in 2004/5 to 2006/7. See The Insolvency Service - Profiles of bankrupts 2004/5 – 2006/7 available at: http://www.insolvencydirect.bis.gov.uk/insolvencyprofessionandlegislation/policychange/policychange.htm

[12] Details of how these figures were reached can be found in annex 2

[13] See annex 2 tables 1(a) – 6(a)

[14] See annex 2 tables 1(b) – 6(b)

[15] See annex 2 tables 1(c) – 6(c)

39. There are two main non-monetised benefits associated with early discharge:
    - The early lifting of bankruptcy restrictions placed on bankrupts which potentially allows former bankrupts to access credit sooner; and
    - The potential for the bankrupt to have a 'fresh start' sooner;

Non-Monetised Benefits:

Early Lifting of Restrictions

40. Early discharge is granted, on average, at around month seven, compared to automatic discharge which takes place in month 12. The shortened discharge period (by an average of five months) means that the legal restrictions imposed on a bankrupt under the Insolvency Act are lifted earlier. These are the lifting of restrictions on; obtaining credit; the use of trading names; and directorships.

41. As regards the lifting of the restriction on obtaining credit, the value of this to bankrupts is negated by a lack of change in lender and credit reference agency policies, which, regardless of whether automatic or early discharge is obtained, will continue to deny bankrupts access to various types of financial products. This will also tend to offset the benefit of lifting the restriction on trading names despite the reduction in the discharge period.

42. The 2008 evaluation report found a bankrupt's ability to recommence trading is reduced primarily by a bankrupt's restricted access to the financial market.

43. As regards the lifting of restrictions on directorships, no data is held on the level of discharged bankrupts who then take up directorships. However, assuming that the bankrupts who were formerly directors are those most likely to consider another directorship within one year of a bankruptcy order, the earlier lifting of this restriction will have minimal impact. Using internal Insolvency Service data available for 2006, only 0.6% of bankrupts were directors at the date of the making of their bankruptcy order, therefore earlier discharge will have no affect on the vast majority of bankrupts, who are not company directors.

44. There will be a small proportion of bankrupts whose occupation is affected by bankruptcy, as there are certain trades and professions where the making of a bankruptcy order will affect an individual's ability to continue in their trade or profession, for example, the Armed Forces, accountancy. Also, there are other instances in legislation, regulations, by-laws and private club rules of restrictions which refer to the individual being a 'fit and proper person'. This may disqualify an undischarged bankrupt, for example, an individual who applies to the local police for a taxi license must be considered a 'fit and proper person'. An early discharge means that such bankrupts may be able to re-commence employment earlier.

45. Statistics available for 2004/5, 2005/6 and 2006/7 show that 30%, 32% and 35% of bankrupts respectively[16] were employees. An analysis of sample data for 2004/5 shows that around 0.5% of such employee bankrupts had occupations that may be affected by bankruptcy (which equates to less than 0.2% of all bankrupts). Therefore, earlier discharge will have no impact on the vast majority of bankrupts who are employees.

An early 'fresh start'

[16] Statistics published by The Insolvency Service show that in the periods 2004/5, 2005/6 and the 9 months ended 31 December 2006, data on occupation was available on 32,193, 42,073 and 42,358 bankrupts respectively; and there were 9,528, 13,626, and 14,971 employee bankrupts respectively.

46. Evidence from the 2008 evaluation found that from a bankrupt's point of view, discharge has the greatest impact on a bankrupt emotionally, and the impact is, in the vast majority of cases, positive. Therefore earlier discharge can have a earlier positive emotional impact on bankrupts by an average of five months.

47. However, any possible benefit this may bring is overshadowed by the bankrupts' own opinion. Surveys conducted during the evaluation showed that approximately 75% of bankrupts thought that automatic discharge after one year gives sufficient time to 'learn' from bankruptcy and therefore offer a fresh start. Less agreed that an early discharge did so, even those who had benefitted from the provision. Furthermore, less than half of those who received early discharge agreed that the provision reduces the stigma attached to bankruptcy.

Monetised Benefit:

48. There are no direct identifiable monetised benefits from the statutory provision of early discharge.

Costs of Option 1

Non-Monetised Cost:

Familiarisation and set-up costs

49. The costs related to changing the current system are transitional and are mainly associated with familiarising Insolvency Service staff with the changes to the discharge process. We do not anticipate these costs would be significant as this would only require staff to stop carrying out a discrete process. There would be no set-up costs and familiarisation would involve informing advice agencies, debtors, the court and creditors of the change of practice.

Emotional Cost to Bankrupt

50. The evaluation report found that release from bankruptcy does offer a positive emotional experience for the bankrupt individual. These results showed that the rehabilitation of bankrupts offered through a shortened discharge period is psychological rather than financial. As most early discharges occur at around month seven, the value or significance of these extra five months is difficult to know or quantify. However, any possible benefit these extra months may bring is overshadowed by the bankrupts' opinion that automatic discharge after one year, rather than early discharge, offers a fresh start and gives sufficient time, if necessary, to 'learn' from bankruptcy.

51. Nearly all respondents to the consultation, including free-to-client money advisors Citizens Advice, commented that they had no evidence to suggest *'that repealing the early discharge provisions would create any significant detriment to the consumer'*. Indeed, the Consumer Credit Counselling Service, another free-to-client money advisor, commented that repealing the early discharge period would be a positive step in ensuring *'that the majority of debtor-petition bankruptcies are treated in the same way and that those applying understand exactly how long they will be declared bankrupt [...]'*.

Monetised Cost:

52. There are no identifiable monetary costs in removing the statutory early discharge provision.

Benefits Of Option 1

53. Repeal of the early discharge provision would mean all bankrupts (subject to some exceptions outlined in paragraph 3) would receive their discharge automatically on the first anniversary of the making of their bankruptcy order. Unlike early discharge, there are no specific statutory or administrative costs associated with automatic discharge.

54. The costs of the early discharge regime arise from the legal provisions contained in the Insolvency Act 1986 and the safeguards in the Insolvency Rules 1986. The estimated benefits of repealing the early discharge provision come from no longer having to carry out the process and therefore are the difference in cost between early discharge and automatic discharge which happens involuntarily and involves no cost. These savings are from:
    - the official receiver no longer having to carry out the statutory requirement to prepare and issue notices to creditors of his intention to file a notice in court; and
    - savings from the creditor not having to object or deal with the early discharge correspondence from the official receiver; and
    - the court no longer having to file the early discharge notice received from the official receiver.

Monetised Benefits:

To the official receiver from removing the statutory practice

55. As shown in table 2, there is a cost of between £0.7 - £1.1 million to the official receiver from statute in complying with the early discharge process. Legislation requires the official receiver to issue a notice of intention to file for early discharge to creditors, and notify the court and send further documentation to the bankrupt in relation to their early discharge (see diagram 1).

56. Furthermore, the benefit of removing the early discharge provision is that the statutory costs associated with early discharge could be removed while the benefits from issuing the income review letter could remain.

57. The income review could be carried out separately by the official receiver, for example, at month six, as part of the case administration process. The statutory responsibility placed on the bankrupt to deliver to the official receiver all papers which relate to his/ her estate[17] could be used to compel the bankrupt to engage in the income review.

Benefits to business

58. When the official receiver sends notice of his or her intention to file the early discharge notice at court, this involves creditors receiving and dealing with the notice from the official receiver. There is also an additional cost if the creditor wishes to object to the commencement of early discharge. The cost to business (including insolvency practitioners appointed as trustees) of dealing with a notice from the official receiver between the years 2004/5 and 2009/10 was between **£0.5 - £0.8 million** per year.

[17] Section 291 The Insolvency Act 1986 and section 333 for bankrupts to cooperate with trustees.

59. Businesses who responded to the consultation were very strongly in favour of repeal. Max Recovery, a creditor, were able to support our findings in their response to the consultation. They were able to show their costs of dealing with an early discharge notice for the period from 2005/6 to 2008/9 as approximately **£0.5 million**.

Benefits to HM Revenue and Customs and other Government creditors

60. HM Revenue and Customs (HMRC) as a regular creditor in bankruptcy proceedings incur the same costs that befall creditors (see table 1). HMRC costs in complying with the early discharge provision amount to less than **£5,000** per year (see annex 1, table 7), while the cost for local authorities is not known.

61. Her Majesty's Courts and Tribunals Service (HMCTS) incur a cost for every single notice they receive from the official receiver relating to early discharge, which they must file[18], amounting to approximately £0.7 - £1.2 million between 2004/5 – 2009/10. Table 2 estimates the total benefit to both HMRC and HMCTS as between **£0.8 - £1.2 million** between 2004/5 to 2009/10.

Non-monetised Benefits:

Certainty, Consistency And Transparency

62. It should be borne in mind that the primary purpose of the early discharge provision, together with the reduction in the automatic discharge period, was to enable the prompt rehabilitation of bankrupts judged to be non-culpable and help lift the stigma of bankruptcy.

63. The evaluation report found around 40% of bankrupts believed that the reduction in *automatic* discharge from three years to one year had reduced the stigma attached to bankruptcy. Although about 40% also believes the early discharge provision had reduced the stigma attached to bankruptcy [19] only 15% thought a discharge period of less than one year was appropriate.

64. Thus, early discharge does not appear to have any greater effect on reducing the stigma attached to bankruptcy than the reduction in the automatic discharge period which will remain in place. Instead, those subject to a bankruptcy order and its restrictions will benefit from certainty, consistency and transparency in the bankruptcy case administration process. Both the evaluation report published in 2008 and the consultation carried out in 2009 highlighted that for both bankrupts and creditors, having a single automatic discharge period (subject to suspension[20]) provides greater clarity, certainty and consistency than early discharge.

ALTERNATIVES TO REGULATION

65. As the requirement to file a notice of early discharge is contained within primary legislation, in order to achieve the desired effect, there are no alternatives to repealing the specific provision. Furthermore, consideration of alternatives is not necessary as the proposed measure is deregulatory.

RISKS AND ASSUMPTIONS

[18] Section 279 Insolvency Act 1986

[19] http://www.insolvencydirect.bis.gov.uk/insolvencyprofessionandlegislation/policychange/policychange.htm

[20] Section 279 Insolvency Act 1986

66. Whilst the Insolvency Service holds records for the number of bankruptcy orders and early discharges granted in a given year, the real price of salaries, consumables, and paper costs are unknown. Therefore for the purpose of the analysis in this impact assessment, costs from 2004/5 have been applied in each year to known case numbers, and the total values have been adapted to incorporate adjustments for wage growth and inflation for each the financial years between 2004/5 to 2009/10. These calculations can be found in the annexes.

67. The breadth of real life case numbers offers a broad range of possible case scenarios, but if bankruptcy numbers were to go up or go down, so too would the estimated costs.

ONE IN ONE OUT

68. The proposed measure to amend existing legislation by removing the statutory provision which enables early discharge, introduces monetary benefits to business, which have been identified in this report, with no associated monetary costs.

69. The direct benefit to business of removing early discharge is the removal of an administrative burden on businesses whereby they no longer have to deal with correspondence from the official receiver in relation to early discharge. This amounts to a total benefit of **£0.5 - £0.8 million** per year (see paragraphs 69 - 71).

70. The best estimate has been used to calculate the equivalent annual impact on business which results in a net benefit to business of **£0.6 million** (see page 2, 'Summary: Analysis and Evidence' page). Thus, for the purpose of this IA, as the measure is in scope of OIOO, the measure qualifies as an Out.

SUMMARY AND CONCLUSIONS

71. Evaluation of the early discharge provision found that the measure does not meet any of its intended objectives. What has emerged from research and consultation carried out by the Insolvency Service, is that there is little value placed on early discharge by creditors, business or bankrupts. Instead, the early discharge measure has imposed a number of statutory and administrative burdens which are not balanced by any clear and direct benefits to government, private bodies or individuals. The average annual best estimate net benefit for business and government of removing the statutory early discharge provision is **£2.8 million** using 2004/5 - 2009/10 figures and 2010 constant prices.

72. Removal of the early discharge provision will result in bankrupts receiving their discharge automatically after one year. Both the evaluation report and the consultation responses showed that stakeholders preferred the consistency and certainty offered by a single automatic discharge period. There are no extra costs or burden to government or creditors in administering automatic discharge.

SPECIFIC IMPACT TESTS

Statutory Equality duties

73. 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. Evaluation carried out on

the individual insolvency provisions did suggest that white bankrupts are more likely to benefit from early discharge than bankrupts from ethnic minority groups. This was partly due to ethnic minority individuals being less likely to petition for their own bankruptcy than white debtors. As a result, due to a higher level of compliance with the process which they voluntarily entered into, white bankrupts are more likely to qualify for early discharge than those in ethnic minority groups. This proposal would therefore have a positive impact on equality duties.

Competition Assessment

74. The proposed policy will have no impact on competition as the work involved in dealing with early discharge from bankruptcy will reduce costs for creditors, The Insolvency Service and other government departments.

Small Firms Impact Test

75. The proposed policy will have little or no impact on small firms.

Environmental Impact

76. The proposed policy will have no direct impact on sustainable development or on greenhouse gas assessments. Nevertheless, 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", there are some environmental benefits such as the reduction in the use of paper, and a reduction in levels of unwanted paper.

Human Rights

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

Rural Proofing

78. The proposed system does not impact upon any rural proofing issues.

Annex 1: Calculations of costs of carrying out the early discharge provision

Table 1(a): Nature of cost to the Official Receiver - 2004-5

	Number of cases dealt with	Type of cost (estimated)[21]	Cost per item	**Total cost**
Issue of notices of intention to file notice under s 279 (2) IA 1986	19,000 which equates to 133,000 letters[22]	Time (30 minutes of A2 time per case)	£15.65	£297,357
		Cost of paper	0.0077	£1,025
		Postage	£0.24	£31,921
		Total		**£330,303**
Dealing with objection to intention to file notice under section 279(2) IA 1986	855	Time (1 hour of C2 time per case)	£50.38	£43,070
		Cost of paper	0.0077	£7
		Postage	£0.24	£205
		Total		**£43,282**
Sending two copies of Form 6.82 to Court where ED has been granted	18,790	Time (15 minutes of A1 time[21] per case)	£6.81	£127,960
		Cost of paper	0.0077	£145
		Postage	£0.24	£4,510
		Total		**£132,614**
Sending a copy of the endorsed Form 6.82 to the bankrupt	18,790	Time (15 minutes of A1 time[21] per case)	£6.81	£127,889
		Cost of paper	0.0077	£145
		Postage	£0.24	£4,510
		Total		**£132,544**
Updating electronic information system	18,790	Time (5 minutes of A1 time per case)	£2.27	**£42,653**

[21] Based on an estimate provided by official receivers. In 2004/5 provincial A1, A2 and C2 time was charged at £27, £31 and £50 per hour respectively and London A1, A2 and C2 time was charged at £30, £35 and £55 per hour respectively since 1 April 2004 under the Insolvency (Amendment) Regulations 2004 No. 472. In 2004/5, 7.5% of all early charges obtained were in respect of London cases and therefore, this breakdown has been applied to calculate a weighted rate for A1, A2 and C2 time of £27.23 £31.30 and £50.38 per hour respectively.

[22] Based on Insolvency Service data, the median number of creditors in each bankruptcy case in 2004/5 to 2006/7 was seven. See The Insolvency Service - Profiles of bankrupts 2004/5 – 2006/7 available at: http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/policychange/profiles2004-7/profileBandC2004-7.htm

Table 1 (b): Cost to business - creditors and insolvency practitioners (as trustee) 2004-5

	Number of cases dealt with (estimates)	Type of cost (estimated) [23]	Cost per item	Total cost
Creditors dealing with notice of intention to file notice under section 279(2) of the Insolvency Act 1986	126685[24]	Time (5 minutes of middle manager time)	£3.28	£415,528
Trustee dealing with notice of intention to file notice under section 279(2) of the Insolvency Act 1986	2470[25]	Time (5 minutes of middle manager time) [26]	£3.28	£8,102
Objections received to intention to file notice under section 279(2) of the Insolvency Act 1986	855	Time (30 minutes of middle manager time)	£19.67	£16,816
		Cost of paper	0.656p[27]	£7
		Postage	£0.24[28]	£205
Total cost to creditors and insolvency practitioners (as trustees)				**£440,658**

Table 1 (c): Nature of cost to OGD - HMRC and HMCTS 2004/5

	Number of cases dealt with (estimated)	Type of cost (estimated)	Cost per item	**Total cost**
HMRC dealing with notice of intention to file notice under section 279(2) of the Insolvency Act 1986	5,254 letters sent[29]	Time (5 minutes of AA time[30])	£0.50	£2,627
HMCTS endorsing Form 6.82 and returning one copy to the Official Receiver	18,790	Time[31]	£36.30	£682,077
Total cost to HMRC and HMCTS				**£684,704**

[23] BERR's Enterprise Directorate (as it was then) advised to use the compliance cost figures used for surveys, and to use this estimate. In 2004/5, the middle manager rate was £39.33 per hour.

[24] Based on the sampling exercise of reports to creditors in 2004/5, 95% of creditors were businesses, therefore 95% of the 133,000 section 279(2) notices issued were to businesses. However, a recent an examination of Insolvency Service petitioning creditor records suggests the proportion of business creditors could be lower, although for the purpose of this exercise and for consistency, the figures from the sample taken in 2004/5 will be used in line with previously published cost benefit analyses.

[25] Based on data held by the Insolvency Service, trustees were appointed in 12.6% of the 19,000 cases where section 279(2) notices were issued.

[26] HMRC confirmed they do not take any action on receipt of section 279(2) notices and therefore, it is assumed that all objections are received from businesses. In 2004/5, the middle manager rate was £39.33 per hour.

[27] Based on information provided by The Insolvency Service. A ream of paper (250 sheets) costs £1.64 + VAT. It is assumed businesses could reclaim the VAT.

[28] Based on information provided by The Insolvency Service.

[29] Based on Insolvency Service data, approximately 5% of creditors were HMRC and therefore, 5% of the 133,000 section 279(2) notices issued were to HMRC.

[30] This is based on an estimate provided by HM Revenue & Customs. In 2004/5, the rate for an AA was £6.05 per hour.

[31] Confirmation of the cost to HM Court Service has been requested but not yet provided. However, from evidence previously provided by the Court Service, the 'rubber-stamping' of an order takes around 15 minutes - this includes the time to locate the necessary file, check that the order is correct and deal with the necessary paperwork and administrative tasks – and court staff time is billed at £2.42 per minute, which includes overheads such as salaries, costs, IT and accommodation.

Table 2 (a): Nature of cost to the Official Receiver - 2005-6

	Number of cases dealt with (estimates)	Type of cost (estimated)[32]	Cost per item	**Total cost**
Issue of notices of intention to file notice under s 279 (2) IA 1986	23385 which equates to 163695 letters for an average of 7 creditors per case[33]	Time (30 minutes of A2 time per case)	£16.29	£380,988
		Cost of paper	0.0079	£1,288
		Postage	£0.32	£52,382
		Total		**£434,659**
Dealing with objection to intention to file notice under section 279(2) IA 1986 - (c)	1052	Time (1 hour minutes of C2 time per case)	£52.44	£55,180
		Cost of paper	0.0079	£8
		Postage	£0.32	£337
		Total		**£55,525**
Sending two copies of Form 6.82 to Court where ED has been granted	23,126	Time (15 minutes of A1 time per case)	£7.09	£163,861
		Cost of paper	0.0079	£182
		Postage	£0.32	£7,400
		Total		**£171,443**
Sending a copy of the endorsed Form 6.82 to the bankrupt	23,126	Time (5 minutes of A1 time per case)	£7.09	£163,861
		Cost of paper	0.0079	£182
		Postage	£0.32	£7,400
		Total		**£171,443**
Updating electronic information system	23,126	Time (5 minuets of A1 time per case)	£2.36	**£54,620**

[32] Based on salaries from 2004/5 with adjustments made for annual earnings growth in the financial year 2005/6 at 4.8%. Thus provincial A1, A2 and C2 time has been estimated to have been charged at £28.30, £32.49 and £52.40 per hour respectively and London A1, A2 and C2 time was charged at £31.44, £36.68 and £57.64 per hour respectively. In 2005/6, 7.7% of all early charges obtained were in respective of London cases and therefore, this breakdown has been applied to calculate a weighted rate for A1, A2 and C2 time of £28.37, £32.58 and £52.44 per hour respectively.

[33] Based on Insolvency Service data, the median number of creditors in each bankruptcy case in 2005/6 to 2006/7 was seven. See The Insolvency Service - Profiles of bankrupts 2004/5 – 2006/7 available at: http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/policychange/profiles2004-7/profileBandC2004-7.htm

Table 2 (b): Cost to business - creditors and insolvency practitioners (as trustee) 2005-6

	Number of cases dealt with (estimates)	Type of cost (estimated)[34]	Cost per item	**Total cost**
Creditors dealing with notice of intention to file notice under section 279(2) of the Insolvency Act 1986	155920[35]	Time (5 minutes of middle manager time)	£3.44	£535,964
Trustee dealing with notice of intention to file notice under section 279(2) of the Insolvency Act 1986	2339[36]	Time (5 minutes of middle manager time)	£3.44	£8,038
Objections received to intention to file notice under section 279(2) of the Insolvency Act 1986	1052	Time (30 minutes of middle manager time)	£20.61	£21,690
		Cost of paper	£0.0079	£8
		Postage	£0.32	£337
Total cost to creditors and insolvency practitioners (as trustees)				**£566,037**

Table 2 (c): Nature of cost to OGD - HMRC and HMCTS 2005/6

	Number of cases dealt with (estimates)	Type of cost (estimated)	Cost per item	**Total cost**
HMRC dealing with notice of intention to file notice under section 279(2) of the Insolvency Act 1986	6466[37]	Time (5 minutes of AA time[38])	£0.52	£3,388
HMCTS endorsing Form 6.82 and returning one copy to the Official Receiver	23,126	Time[39]	£38.04	£879,769
Total cost to HMRC AND HMCTS				**£883,157**

[34] In 2005/6, the middle manager rate was £41per hour. This is based on the hourly rate for middle managers in 2004/5 with adjustments made for the growth in annual earnings in the financial year 2008/9 at 4.8%.

[35] Based on the sampling exercise of reports to creditors in 2005/6, 95% of creditors were businesses, therefore 95% of section 279(2) notices issued were to businesses. However, a recent an examination of Insolvency Service petitioning creditor records suggests the proportion of business creditors could be lower, although for the purpose of this exercise and for consistency, the figures from the sample taken in 2004/5 will be used in line with previously published cost benefit analyses.

[36] Based on Insolvency Service data, trustees were appointed in 10.2% of the 23,385 cases where section 279(2) notices were issued.

[37] Based on a sampling exercise carried out in 2004/5, approximately 5% of creditors were HMRC. A more recent examination of HMRC petitioner record detail held by The Insolvency Service, and anecdotal evidence, suggests this figure is a lot higher, but for the purpose of these calculations and for consistency, the proportion extrapolated from the 2004/5 sampling exercise will be used.

[38] In 2005/6, the rate for an AA was £6.34 per hour. This is based on the hourly rate for court staff in 2004/5 with adjustments made for the growth in annual earnings in the financial year 2005/6.

[39] Court staff time in 2005/6 is estimated to have been billed at £2.54 per minute, which includes overheads such as salaries, costs, IT and accommodation. This is based on the hourly rate for court staff in 2004/5 with adjustments made for the growth in annual earnings in the financial year 2005/6.

Table 3 (a): Nature of cost to the Official Receiver - 2006-7

	Number of cases dealt with (estimates)	Type of cost (estimated)[40]	Cost per item	**Total cost**
Issue of notices of intention to file notice under s 279 (2) IA 1986	Estimated at 27,543 cases, which equates to 192,804 letters[41]	Time (30 minutes of A2 time per case)	£17.24	£474,844
		Cost of paper	0.0081	£1,562
		Postage	£0.34	£65,555
		Total		**£541,961**
Dealing with objection to intention to file notice under section 279(2) IA 1986	1239	Time (1 hour of C2 time per case)	£55.47	£68,746
		Cost of paper	0.0081	£10
		Postage	£0.34	£421
		Total		**£69,177**
Sending two copies of Form 6.82 to Court where ED has been granted	27,239	Time (15 minutes of A1 time[40] per case)	£7.50	£204,178
		Cost of paper	0.0081	£220
		Postage	£0.34	£9,261
		Total		**£213,659**
Sending a copy of the endorsed Form 6.82 to the bankrupt	27,239	Time (15 minutes of A1 time per case)	£7.50	£204,178
		Cost of paper	0.0081	£220
		Postage	£0.34	£9,261
		Total		**£213,659**
Updating electronic information system	27,239	Time (5 minutes of A1 time per case)	£2.50	**£68,059**

[40] Based on estimated salaries estimated from 2005/6 with adjustments made for annual earnings growth in the financial year 2006/7 at 4.9%. Thus provincial A1, A2 and C2 time has been estimated to have been charged at £29.69, £34.09 and £54.99 per hour respectively and London A1, A2 and C2 time was charged at £32.99, £38.49 and £60.49 per hour respectively. In 2006/7, 8.9% of all early charges obtained were in respective of London cases and therefore, this breakdown has been applied to calculate a weighted rate for A1, A2 and C2 time of £29.98, £34.48 and £55.47 per hour respectively.

[41] Based on Insolvency Service data, the median number of creditors in each bankruptcy case in 2005/6 to 2006/7 was seven. See The Insolvency Service - Profiles of bankrupts 2004/5 – 2006/7 available at: http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/policychange/profiles2004-7/profileBandC2004-7.htm . An assumption has been made that this is also the average number of creditors in bankruptcy cases for this year.

Table 3(b): Cost to business - creditors and insolvency practitioners (as trustee) 2006-7

	Number of cases dealt with (estimates)	Type of cost (estimated) [42]	Cost per item	**Total cost**
Creditors dealing with notice of intention to file notice under section 279(2) of the Insolvency Act 1986	183650[43]	Time (5 minutes of middle manager time)	£3.61	£662,449
Trustee dealing with notice of intention to file notice under section 279(2) of the Insolvency Act 1986	2479[44]	Time (5 minutes of middle manager time)	£3.61	£8,942
Objections received to intention to file notice under section 279(2) of the Insolvency Act 1986	1239	Time (30 minutes of middle manager time)	£21.63	£26,809
		Cost of paper	£0.0081	£10
		Postage	£0.34	£421
Total cost to creditors and insolvency practitioners (as trustees)				**£698,631**

Table 3(c): Nature of cost to OGD - HMRC and HMCTS 2006-7

	Number of cases dealt with (estimates)	Type of cost (estimated)	Cost per item	**Total cost**
HMRC dealing with notice of intention to file notice under section 279(2) of the Insolvency Act 1986	7616[45]	Time (5 minutes of AA time)	£0.55	£4,188
HMCTS endorsing Form 6.82 and returning one copy to the Official Receiver	27,239	Time[46]	£39.92	£1,087,390
Total cost to HMRC and HMCTS				**£1,091,578**

[42] In 2006/7, the middle manager rate was £43.25 per hour. This is based on the hourly rate for middle managers in 2005/6 with adjustments made for the growth in annual earnings in the financial year 2006/7 at 4.9%.

[43] Based on a sampling exercise of reports to creditors in 2004/5, 95% of creditors were businesses, therefore 95% of section 279(2) notices issued were to businesses. However, a recent an examination of Insolvency Service petitioning creditor records suggests the proportion of business creditors could be lower, although for the purpose of this exercise and for consistency, the figures from the sample taken in 2004/5 will be used in line with previously published cost benefit analyses.

[44] Assuming that trustees were appointed in 9.26% of the 27,239 cases where section 279(2) notices were issued. This figure is based on Insolvency Service records.

[45] Based on a sampling exercise carried out in 2004/5, approximately 5% of creditors were HMRC. A more recent examination of HMRC petitioner record detail held by The Insolvency Service, and anecdotal evidence, suggests this figure is a lot higher, but for the purpose of these calculations and for consistency, the proportion extrapolated from the 2004/5 sampling exercise will be used.

[46] In 2006/7, the rate for an AA was £6.65 per hour. This is based on the hourly rate for court staff in 2005/6 with adjustments made for the growth in annual earnings in the financial year 2006/7.

Table 4 (a): Nature of cost to the Official Receiver - 2007- 8

	Number of cases dealt with (estimates)	Type of cost (estimated)[47]	Cost per item	**Total cost**
Issue of notice of intention to file notice under s 279 (2) IA 1986	24067 which equates to 168466 letters with an average of 7 creditors per case[48]	Time (30 minutes of A2 time per case)	£17.98	£432,796
		Cost of paper	0.0083	£1,398
		Postage	£0.36	£60,648
		Total		**£494,842**
Dealing with objection to intention to file notice under section 279(2) IA 1986 - (c)	1083	Time (1 hour minutes of C2 time per case)	£57.88	£62,673
		Cost of paper	0.0083	£9
		Postage	£0.36	£390
		Total		**£63,071**
Sending two copies of Form 6.82 to Court where ED has been granted	23,800	Time (15 minutes of A1 time per case)	£7.82	£186,124
		Cost of paper	0.0083	£196
		Postage	£0.36	£8,568
		Total		**£194,888**
Sending a copy of the endorsed Form 6.82 to the bankrupt	23,800	Time (5 minutes of A1 time per case)	£7.82	£186,124
		Cost of paper	0.0083	£196
		Postage	£0.36	£8,568
		Total		**£194,888**
Updating electronic information system	23,800	Time (5 minuets of A1 time per case)	£2.61	**£62,041**

[47] Based on estimated salaries from 2006/7 with adjustments made for annual earnings growth in the financial year 2007/8 at 4.4%. Thus provincial A1, A2 and C2 time has been estimated to have been charged at £31.01, £35.60 and £57.42 per hour respectively and London A1, A2 and C2 time was charged at £34.45, £40.20 and £63.16 per hour respectively. In 2007/8, 8.8% of all early charges obtained were in respective of London cases and therefore, this breakdown has been applied to calculate a weighted rate for A1, A2 and C2 time of £31.28, £35.97 and £57.88 per hour respectively.

[48] Assuming each bankrupt has, on average seven creditors. The average is the median of the number of creditors in the bankruptcy cases in 2004/5 to 2006/7. See The Insolvency Service - Profiles of bankrupts 2004/5 – 2006/7 available at: http://www.insolvencydirect.bis.gov.uk/insolvencyprofessionandlegislation/policychange/profiles2004-7/profileBandC2004-7.htm

Table 4(b): Cost to business - creditors and insolvency practitioners (as trustee) 2007- 8

	Number of cases dealt with (estimates)	Type of cost (estimated) [49]	Cost per item	**Total cost**
Creditors dealing with notice of intention to file notice under section 279(2) of the Insolvency Act 1986	160464[50]	Time (5 minutes of middle manager time)	£3.77	£604,406
Trustee dealing with notice of intention to file notice under section 279(2) of the Insolvency Act 1986	2166[51]	Time (5 minutes of middle manager time)	£3.77	£8,158
Objections received to intention to file notice under section 279(2) of the Insolvency Act 1986	1083	Time (30 minutes of middle manager time)	£22.59	£24,460
		Cost of paper	£0.0083	£8
		Postage	£0.36	£390
Total cost to creditors and insolvency practitioners (as trustees)				**£637,422**

Table 4 (c): Nature of cost to OGD - HMRC and HMCTS 2007- 8

	Number of cases dealt with (estimates)	Type of cost (estimated)	Cost per item	**Total cost**
HMRC dealing with notice of intention to file notice under section 279(2) of the Insolvency Act 1986	6654[52]	Time (5 minutes of AA time[53])	£0.57	£3,821
HMCTS endorsing Form 6.82 and returning one copy to the Official Receiver	23,800	Time[54]	£41.69	£992,114
Total cost to HMRC and HMCTS				**£995,934**

[49] In 2007/8, the middle manager rate was £45 per hour. This is based on the hourly rate for middle managers in 2004/5 with adjustments made for the growth in annual earnings in the financial year 2008/9 at 4.4%.

[50] Based on a 2004/5 sampling exercise, the assumption has been kept for the purpose of this analysis that 95% of creditors are businesses. More recent evidence suggests this figure could be lower.

[51] Insolvency Service records show that trustees were appointed in 9.33% of the23,800 cases where section279(2) notices were issued in 2007/8.

[52] Based on a sampling exercise carried out in 2004/5, approximately 5% of creditors were HMRC. A more recent examination of HMRC petitioner record detail held by The Insolvency Service, and anecdotal evidence, suggests this figure is a lot higher, but for the purpose of these calculations and for consistency, the proportion extrapolated from the 2004/5 sampling exercise will be used.

[53] In 2007/8 the rate for an AA was £6.95 per hour. This is based on the hourly rate for court staff in 2006/7 with adjustments made for the growth in annual earnings in the financial year 2007/8.

[54] Court staff time in 2007/8 is estimated to have been billed at £2.78 per minute, which includes overheads such as salaries, costs, IT and accommodation. This is based on the hourly rate for court staff in 2006/7 with adjustments made for the growth in annual earnings in the financial year 2007/8.

Table 5 (a): Nature of cost to the Official Receiver - 2008- 9

	Number of cases dealt with (estimates)	Type of cost (estimated)[55]	Cost per item	**Total cost**
Issue of notice of intention to file notice under s 279 (2) IA 1986	27000 which equates to 189000 letters where there are 7 creditors on average[56]	Time (30 minutes of A2 time per case)	£18.29	£493,811
		Cost of paper	0.0086	£1,625
		Postage	£0.38	£71,820
		Total		**£567,256**
Dealing with objection to intention to file notice under section 279(2) IA 1986 - (c)	1223	Time (1 hour minutes of C2 time per case)	£58.86	£72,012
		Cost of paper	0.0086	£10
		Postage	£0.38	£465
		Total		**£72,487**
Sending two copies of Form 6.82 to Court where ED has been granted	26,889	Time (15 minutes of A1 time per case)	£7.95	£213,859
		Cost of paper	0.0086	£230
		Postage	£0.38	£10,218
		Total		**£224,307**
Sending a copy of the endorsed Form 6.82 to the bankrupt	26,889	Time (5 minutes of A1 time per case)	£7.95	£213,859
		Cost of paper	0.0086	£230
		Postage	£0.38	£10,218
		Total		**£224,307**
Updating electronic information system	26,889	Time (5 minuets of A1 time per case)	£2.65	**£71,286**

[55] Based on estimated salaries from 2007/8 with adjustments made for annual earnings growth in the financial year 2008/9 at 1.7%. Thus provincial A1, A2 and C2 time has been estimated to have been charged at £31.53, £36.20 and £58.39 per hour respectively and London A1, A2 and C2 time was charged at £35.03, £40.88 and £64.23 per hour respectively. In 2008/9, 8.8% of all early charges obtained were in respective of London cases and therefore, this breakdown has been applied to calculate a weighted rate for A1, A2 and C2 time of £31.81, £36.58 and £58.86 per hour respectively.

[56] Assuming each bankrupt has, on average seven creditors. The average is the median of the number of creditors in the bankruptcy cases in 2004/5 to 2006/7. See The Insolvency Service - Profiles of bankrupts 2004/5 – 2006/7 available at: http://www.insolvencydirect.bis.gov.uk/insolvencyprofessionandlegislation/policychange/profiles2004-7/profileBandC2004-7.htm

Table 5 (b) Cost to business - creditors and insolvency practitioners (as trustee) 2008-9

	Number of cases dealt with (estimates)	Time taken[57]	Cost per item	Total Cost
Creditors dealing with notice of intention to file notice under section 279(2) of the Insolvency Act 1986	160464[58]	Time (5 minutes of middle manager time)	£3.83	£615,544
Trustee dealing with notice of intention to file notice under section 279(2) of the Insolvency Act 1986	1925[59]	Time (5 minutes of middle manager time)	£3.83	£7,386
Objections received to intention to file notice under section 279(2) of the Insolvency Act 1986	1223	Time (30 minutes of middle manager time)	£22.97	£28,105
		Cost of paper	£0.0086	£215
		Postage	£0.38	£465
Total cost to creditors and insolvency practitioners (as trustees)				**£651,714**

Table 5 (c): Nature of cost to OGD - HMRC and HMCTS 2008-9

	Number of cases dealt with (estimates)	Type of cost (estimated)	Cost per item	**Total cost**
HMRC dealing with notice of intention to file notice under section 279(2) of the Insolvency Act 1986	6654[60]	Time (5 minutes of AA time[61])	£0.58	£3,891
HMCTS endorsing Form 6.82 and returning one copy to the Official Receiver	26,889	Time[62]	£42.39	£1,139,951
Total cost to HMRC and HMCTS				**£1,143,843**

[57] In 2008/9, the middle manager rate was £45 per hour. This is based on the hourly rate for middle managers in 2004/5 with adjustments made for the growth in annual earnings in the financial year 2008/9 at 1.7%.

[58] Based on a 2004/5 sampling exercise, the assumption has been kept for the purpose of this analysis that 95% of creditors are businesses. More recent evidence suggests this figure could be lower.

[59] Insolvency Service records show that trustees were appointed in 7.88% of the 26,889 cases where section 279(2) notices were issued.

[60] Based on a sampling exercise carried out in 2004/5, approximately 5% of creditors were HMRC. A more recent examination of HMRC petitioner record detail held by The Insolvency Service, and anecdotal evidence, suggests this figure is a lot higher, but for the purpose of these calculations and for consistency, the proportion extrapolated from the 2004/5 sampling exercise will be used.

[61] In 2008/9, the rate for an AA was £6.60 per hour. This is based on the hourly rate for court staff in 2007/8 with adjustments made for the growth in annual earnings in the financial year 2008/9.

[62] Court staff time in 2008/9 is estimated to have been billed at £2.83 per minute, which includes overheads such as salaries, costs, IT and accommodation. This is based on the hourly rate for court staff in 2007/8 with adjustments made for the growth in annual earnings in the financial year 2008/9.

Table 6 (a) : Nature of cost to the Official Receiver – 2009-10

	Number of cases dealt with (estimates)	Type of cost (estimated)[63]	Cost per item	**Total cost**
Issue of notice of intention to file notice under s 279 (2) IA 1986	25911 which equates to 181377 letters with an average of 7 creditors per case[64]	Time (30 minutes of A2 time per case)	£18.58	£481,461
		Cost of paper	0.0088	£1,596
		Postage	£0.41	£74,365
		Total		**£557,422**
Dealing with objection to intention to file notice under section 279(2) IA 1986	1166	Time (1 hour minutes of C2 time per case)	£59.80	£69,720
		Cost of paper	0.0088	£10
		Postage	£0.41	£478
		Total		**£70,208**
Sending two copies of Form 6.82 to Court where ED has been granted	25,624	Time (15 minutes of A1 time per case)	£8.08	£207,052
		Cost of paper	0.0088	£225
		Postage	£0.41	£10,506
		Total		**£217,783**
Sending a copy of the endorsed Form 6.82 to the bankrupt	25,624	Time (5 minutes of A1 time per case)	£8.08	£207,052
		Cost of paper	0.0088	£225
		Postage	£0.41	£10,506
		Total		**£217,783**
Updating electronic information system	25,624	Time (5 minuets of A1 time per case)	£2.69	**£69,017**

[63] Based on estimated salaries from 2008/9 with adjustments made for annual earnings growth in the financial year 2009/10 at 1.6%. Thus provincial A1, A2 and C2 time has been estimated to have been charged at £32.04, £36.78 and £59.32 per hour respectively and London A1, A2 and C2 time was charged at £35.60, £41.53 and £65.26 per hour respectively. In 2009/10, 8.8% of all early charges obtained were in respective of London cases and therefore, this breakdown has been applied to calculate a weighted rate for A1, A2 and C2 time of £32.32, £37.16 and £59.80 per hour respectively.

[64] Assuming each bankrupt has, on average seven creditors. The average is the median of the number of creditors in the bankruptcy cases in 2004/5 to 2006/7. See The Insolvency Service - Profiles of bankrupts 2004/5 – 2006/7 available at: http://www.insolvencydirect.bis.gov.uk/insolvencyprofessionandlegislation/policychange/profiles2004-7/profileBandC2004-7.htm

Table 6 (b): Cost to business - creditors and insolvency practitioners (as trustee) 2009-10

	Number of cases dealt with (estimates)	Time taken[65]	Cost per item	Total cost
Creditors dealing with notice of intention to file notice under section 279(2) of the Insolvency Act 1986	172762[66]	Time (5 minutes of middle manager time)	£3.89	£672,367
Trustee dealing with notice of intention to file notice under section 279(2) of the Insolvency Act 1986	1814[67]	Time (5 minutes of middle manager time)	£3.89	£7,059
Objections received to intention to file notice under section 279(2) of the Insolvency Act 1986	1166	Time (30 minutes of middle manager time)	£23.34	£27,210
		Cost of paper	£0.0088	£205
		Postage	£0.41	£478
Total cost to business (creditors and insolvency practitioners as trustees)				**£707,319**

Table 6 (c): Nature of cost to OGD - HMRC and HMCTS 2009-10

	Number of cases dealt with (estimates)	Type of cost (estimated)	Cost per item	**Total cost**
HMRC dealing with notice of intention to file notice under section 279(2) of the Insolvency Act 1986	7164[68]	Time (5 minutes of AA time[69])	£0.59	£4,250
HMCTS endorsing Form 6.82 and returning one copy to the Official Receiver	25,624	Time[70]	£43.07	£1,103,670
Total cost to HMRC and HMCTS				**£1,107,920**

[65] In 2009/10, the middle manager rate was £47 per hour. This is based on the hourly rate for middle managers in 2004/5 with adjustments made for the growth in annual earnings in the financial year 2009/10 at 1.6%.

[66] Based on a 2004/5 sampling exercise, the assumption has been kept for the purpose of this analysis that 95% of creditors are businesses. More recent evidence suggests this figure could be lower.

[67] Insolvency Service records show that trustees were appointed in 7% of the 25,911 cases in 2009-10 where section 279(2) notices were issued.

[68] Based on a 2004/5 sampling exercise, the assumption has been kept for the purpose of this analysis that 5% of creditors are HMRC. More recent evidence suggests this figure could be higher.

[69] In 2009/10, the rate for an AA was £7.18 per hour. This is based on the hourly rate for court staff in 2008/9 with adjustments made for the growth in annual earnings in the financial year 2009/10.

[70] Court staff time in 2009/10 is estimated to have been billed at £2.87 per minute, which includes overheads such as salaries, costs, IT and accommodation. This is based on the hourly rate for court staff in 2008/9 with adjustments made for the growth in annual earnings in the financial year 2009/10.

Table 7: Summary of costs to Government and Business of processing the statutory elements of the early discharge process, 2004/5 – 2009/10

Cost from statute to official receiver of processing early discharge	**04/05**	**05/06**	**06/07**	**07/08**	**08/09**	**09/10**
Pay	638,930	818,511	1,020,005	929,758	1,064,826	1,034,303
Paper	1,320	1,667	2,013	1,802	2,098	2,057
Postage	41,145	67,520	84,499	78,174	92,721	95,854
Total (current prices)	681,395	887,697	1,106,517	1,009,734	1,159,645	1,132,215
Deflator (CPI based)	1.14	1.11	1.08	1.06	1.02	1.00
Total (constant prices - 09/10)	773,602	987,091	1,199,763	1,071,174	1,185,554	1,132,215

Cost to business of dealing with early discharge	**04/05**	**05/06**	**06/07**	**07/08**	**08/09**	**09/10**
Pay	440,446	565,693	698,200	637,024	651,034	706,636
Paper	7	8	10	8	215	205
Postage	205	337	421	390	465	478
Total (current prices)	440,658	566,037	698,631	637,422	651,714	707,319
Deflator (CPI based)	1.14	1.11	1.08	1.06	1.02	1.00
Total (constant prices - 09/10)	500,288	629,416	757,505	676,208	666,275	707,319

Cost to HMCTS and HMRC of dealing with early discharge	**04/05**	**05/06**	**06/07**	**07/08**	**08/09**	**09/10**
HMRC	2,627	3,388	4,188	3,821	3,891	4,250
HMCTS	682,077	879,769	1,087,390	992,114	1,139,951	1,103,670
Total (current prices)	684,704	883,157	1,091,578	995,934	1,143,843	1,107,921
Deflator (CPI based)	1.14	1.11	1.08	1.06	1.02	1.00
Total (constant prices - 09/10)	777,358	982,042	1,183,565	1,056,535	1,169,399	1,107,921

Total cost of dealing with early discharge	**04/05**	**05/06**	**06/07**	**07/08**	**08/09**	**09/10**
Pay	1,764,080	2,267,360	2,809,783	2,562,716	2,935,129	2,848,860
Paper	1,327	1,675	2,023	1,811	2,098	2,057
Postage	41,350	67,856	84,920	78,563	93,185	96,332
Total (current prices)	1,806,757	2,336,891	2,896,726	2,643,090	3,030,413	2,947,249
Deflator (CPI based)	1.14	1.11	1.08	1.06	1.02	1.00
Total (constant prices - 09/10)	2,051,248	2,598,549	3,140,833	2,803,918	3,098,120	2,947,249

Average annual constant price:	2,773,320

Regulatory Policy Committee	**OPINION**	
Impact Assessment (IA)	Repeal of 'Early Discharge from bankruptcy' provision	
Lead Department/Agency	Department for Business, Innovation and Skills	
Stage	Final	
Origin	Domestic	
Date submitted to RPC	10/02/2012	
RPC Opinion date and reference	13/03/2012	RPC11-BIS-1166(2)
Overall Assessment	GREEN	

The IA is fit for purpose. The issues raised in our previous opinion of 07/12/2012 have been adequately addressed.

Identification of costs and benefits, and the impacts on small firms, public and third sector organisations, individuals and community groups and reflection of these in the choice of options

The issues raised in our previous opinion of 07/12/2012 have been adequately addressed. The revised IA explains clearly the bankruptcy and early discharge process and provides an adequate assessment of the likely costs and benefits of the proposed removal of the early discharge provisions. In particular, the IA clearly explains the differences between early and automatic discharges, which helps to understand the additional impacts the proposed removal of the early discharge may have.

Have the necessary burden reductions required by One-in, One-out been identified and are they robust?

The revised IA claims the proposal is a deregulatory measure ("an OUT"), with and Equivalent Annual Net Cost to Business (EANCB) of -£0.6m. This is consistent with the current OIOO Methodology. The estimated EANCB figure appears reasonable.

Signed **Michael Gibbons,** Chairman

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