

<b>Title:</b> Consultation on fee proposals for grants of probate  <b>IA No:</b> MoJ004/2016  <b>Lead department or agency:</b> MOJ  <b>Other departments or agencies:</b> HM Courts and Tribunals Service	<b>Impact assessment (IA)</b>		
	<b>Date:</b> 18/02/2016		
	<b>Stage:</b> Consultation		
	<b>Source of intervention:</b> Domestic		
	<b>Type of measure:</b> Secondary Legislation		
<b>Contact for enquiries:</b> probatefeespolicy@justice.gsi.gov.uk			
<b>Summary: Intervention and Options</b>			<b>RPC Opinion:</b> N/A

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2014 prices)	In scope of One-In, Three-Out? Measure qualifies as
£-0.1m	n/a	n/a	No n/a

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

While the running costs of HM Courts and Tribunals Service (HMCTS) in England and Wales were £1.8 billion in 2014-15, only £700 million in income was received, representing a net cost to the taxpayer of around £1.1 billion. The Government is committed to delivering a balanced budget by 2018-19 and to do so, the Ministry of Justice (MoJ) needs to continue to manage its finances sensibly. Therefore our fee income plans need to be more ambitious. In addition, we believe the current probate fee system where smaller estates pay the same fees as larger estates, is not equitable.

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

The MoJ's long term aim is to protect access to justice by making sure that the courts and tribunals are adequately resourced while reducing the overall taxpayer subsidy to HMCTS. The aim is to move towards a structure where the fees are more proportionate to the net value of an estate. They would therefore be fairer and more progressive as they would be based on the principle that court users who can afford to pay more should do so.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option.**

The following options were considered:

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

Option 1 is the preferred option because it best achieves the objective of ensuring that we have a properly funded courts and tribunals system. It also proposes a new fees structure which is fairer for applicants as the fee is based on a net value of an estate which would only impact on estates worth £50,000 and above.

<b>Will the policy be reviewed? It will not be reviewed. If applicable, set review date:</b>					
<b>Does implementation go beyond minimum EU requirements?</b>			N/A		
<b>Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.</b>		Micro No	< 20 No	Small No	Medium No
<b>What is the CO<sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO<sub>2</sub> equivalent)</b>			<b>Traded:</b>		<b>Non-traded:</b>
			N/A		N/A

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

Signed by the responsible Minister:  Date: 18/02/2016

# Summary: Analysis and Evidence

# Policy Option 1

**Description:** Increase fees for non-contentious probate proceedings

Price Base Year 2015	PV Base Year 2016	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: -0.1

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low		1		
High				
<b>Best Estimate</b>	<b>0.1</b>		<b>256</b>	<b>2,119</b>

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

Transitional HMCTS costs, including those of minor adjustments to court IT systems and of reissuing forms and guidance, are expected to be up to £0.1m. The total additional ongoing cost to court users from paying increased probate fees is estimated to be around £256m per annum (in 2014-15 prices).

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

There may be some minor transitional costs related to HMCTS staff familiarising themselves with the changed fees. Familiarisation costs for individuals who apply for probate are expected to be negligible. Applicants may, however, face a cash flow cost as probate fees are paid upfront usually by the executors. This cost will be recouped once the grant of probate has been issued and the estate has been released.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	1		
High	0			
<b>Best Estimate</b>	<b>0</b>		<b>256</b>	<b>2,119</b>

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

HMCTS would benefit from increased fee income of around £256m per annum (in 2014-15 prices). The subsidy from the taxpayer to HMCTS would be reduced by a similar amount.

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

None.

**Key assumptions/sensitivities/risks**

- Our central scenario calculations are based on the assumption that changes to the fee structure will not cause a fall in demand. Sensitivity analysis considers the impact on additional income of any potential behavioural changes by court users and any 'pull forward' of cases to avoid the increased fees. These effects mean the additional income of £256m to HMCTS should be considered an upper estimate.
- It has also been assumed that there will be no detrimental impacts on legal services providers who make probate applications on behalf of clients.

<b>Direct impact on business (Equivalent Annual) £m):</b>			<b>In scope of OITO?</b>	<b>Measure qualifies as</b>
<b>Costs:</b> N/A	<b>Benefits:</b> N/A	<b>Net:</b> N/A	No	N/A

# Evidence Base

## A. Background

1. The probate system in England and Wales deals with around £81 billion of assets each year through transferring ownership of, and in many cases liquidating, estates. In England and Wales<sup>1</sup>, obtaining a grant of probate is the process by which a personal representative demonstrates his or her authority to deal with the property, money and possessions (the 'estate') of the deceased after their death. It is applied for in the probate registry (Family Division) and is usually sought by the executor of the will of the deceased or a person acting on their behalf. A grant of probate is not required for any assets that are worth below £5,000, or for assets that are owned by the deceased with other persons as 'beneficial joint tenants'.
2. The current fees charged for a grant of probate are £215 if an application is made by an individual (38% of total applications) and £155 for where it is made by a solicitor (62% of all applications)<sup>2</sup>. A 'personal' application for a grant of probate is charged a higher fee compared to those submitted via a solicitor because of the additional administrative work the Probate Service has to undertake to process these types of application. These fees reflect average administration costs and currently generate around £45m per annum in fee income for HM Courts and Tribunal Service (HMCTS).
3. Only around 50% of deaths lead to an application for probate as any estate worth below £5,000 net does not pay a fee. In addition, the ownership of some assets (e.g., houses) can pass (usually to a surviving spouse) without a grant of probate when they were owned as beneficial joint tenants. Some assets can also be released without a grant of probate and some banks allow the executor to access the account of the deceased to the value of £25,000 to pay other death-related expenses.

## B. Policy Rationale and Objectives

4. The Ministry of Justice's (MoJ) policy aim is that HMCTS is resourced in such a way that access to justice is protected while the costs to the general taxpayer are reduced. There is also the need to help meet the Government's wider policy aim of reducing the deficit to help deliver a stronger economy.
5. The current flat fees also means the fee paid bears no relation to the value of the estate, resulting in smaller estates paying the same as larger ones. Therefore a further aim of the proposal is to make probate fees fairer by making them more proportionate to the net value of an estate.

## C. Description of Options Considered

6. The following two options are considered:
  - **Option 0 – Do Nothing.** Maintain the current fee structure for non-contentious probate.
  - **Option 1 – Introduce a new fee structure for probate applications.** This will make the probate fee payable more proportionate to the net value of the estate while raising the threshold at which an estate will require a grant of probate from £5,000 to £50,000.
7. The Government's preferred option is Option 1, as this best meets the policy objectives.

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<sup>1</sup> Scotland and Northern Ireland have separate processes.

<sup>2</sup> The Non- Contentious Probate Fees (Amendment) Order 2014 - [http://www.legislation.gov.uk/ukSI/2014/876/pdfs/ukSI\\_20140876\\_en.pdf](http://www.legislation.gov.uk/ukSI/2014/876/pdfs/ukSI_20140876_en.pdf)

## **D. Affected Stakeholder Groups, Organisations and Sectors**

8. These reforms would primarily affect individuals pursuing cases through the courts. A list of all the main groups that would be affected is show below:
- Individuals – those, mainly executors, who apply for a grant of probate;
  - HMCTS – who operate the Probate Service;
  - Taxpayers – who subsidise HMCTS as overall HMCTS income falls below its overall costs; and
  - Legal services providers who supply probate-related services.

## **E. Cost Benefit Analysis**

9. This Impact Assessment (IA) identifies both monetised and non-monetised impacts on individuals, groups and businesses in England and Wales with the aim of understanding what the overall impact on society might be from implementing the proposed fee structure.
10. The costs and benefits of each proposal are compared to Option 0, the Do Nothing or ‘baseline’ case, where probate fees are maintained at their current levels.

## **Key Assumptions**

### *Methodology*

11. We present the annual costs and benefits in steady state throughout this IA, although our sensitivity analysis does look at two factors that may have an impact on the expected fee income. These factors include any behavioural impacts from the new fee structure by those applying for a grant of probate or any potential ‘pull-forward’ of applications in the period prior to the fee change where applicants seek to pay the existing fees (see the section below on risks and sensitivity).
12. To estimate the additional fee income, we have used HM Revenue and Customs (HMRC) data on estate volumes and net values in England and Wales. These projections are based on inheritance tax forecasts used for the 2015 Autumn Statement after adjustments have been made for the value of any gifts made in the seven years prior to death (which do not form part of the estate for probate purposes). The proposed fees were multiplied by the number of eligible estates to give the predicted additional income for HMCTS after the current probate fee income has been deducted.
13. All estimates, unless stated otherwise, are annualised figures in 2014-15 prices.

### *Demand*

14. When demand (user behaviour) changes in response to a price rise, the effect is known as the price elasticity of demand. In the case of probate services it is highly unlikely that demand will change in response to these planned fee changes. This is because demand is related to the number of deaths, which is relatively stable in England and Wales, and there are few alternatives for people to gain access to the deceased’s estate without applying for a grant of probate.
15. These considerations suggest that the volume of probate applications will be relatively price inelastic and volumes should not change in response to the proposed fee changes. This assumption is explored further in the risk and sensitivity section below.

### *Remissions*

16. We assume there are no remissions apart from in exceptional circumstances. This is because we believe that most executors are able to access the bank account(s) of the deceased in order to cover the cost of the probate fee, or will be able to access products such as bridging loans secured against the value of the estate. Allowing remissions in exceptional circumstances, however, has the aim of

ensuring that no one is denied access to justice or that any executor is put in a position of being liable for a fee they cannot pay. The total value of any remissions granted under such circumstances has not been quantified and is not thought to be substantial.

#### *Net Present Value*

17. The Net Present Value (NPV) is calculated over a ten-year period, under the assumption that the proposed fees do not increase in line with inflation. Fees are not included in the overall NPV as they represent a transfer payment between the individuals who apply for probate and HMCTS.

#### **Option 0 – Do Nothing. Maintain the current fee structure**

18. Under the Do Nothing option the current fee structure would remain in place. In steady state, using the HMRC data we estimate that probate fees would generate around £46m per year.
19. As the Do Nothing option is compared to itself, the costs and benefits of this option are necessarily zero as is its net present value (NPV).

#### **Option 1 – Introduce a new fee structure for grant of probate applications. The threshold at which an estate will attract a probate fee will increase from £5,000 to £50,000.**

20. Under this option a new fee structure would be introduced for individual executors, or firms of solicitors acting on behalf of executors, who need to apply for a grant of probate. The fees will be banded by the net value of the estate, with the highest fee payable being capped at 1% of the net value of an estate worth £2m. The proposed fee regime is shown in Table 1, alongside the current personal application fee which we consider to be the most appropriate comparator.

**Table 1: Proposed fee bands for probate applications**

<b>Value of estate (before inheritance tax)</b>	<b>Existing fee<sup>3</sup></b>	<b>Proposed fee</b>
Below £50,000 or exempt	£215 <sup>4</sup>	£0
Exceeds £50,000 but does not exceed £300,000	£215	£300
Exceeds £300,000 but does not exceed £500,000	£215	£1,000
Exceeds £500,000 but does not exceed £1m	£215	£4,000
Exceeds £1m but does not exceed 1.6m	£215	£8,000
Exceeds £1.6m but does not exceed £2m	£215	£12,000
Above £2m	£215	£20,000

21. The seven fee bands will create progressive structure whereby higher value estates will pay proportionally more compared to lower value estates. The fee will be based on the net value of an estate (i.e., after outstanding debts) but before inheritance tax liabilities have been applied.
22. The proposal also includes raising the threshold for when a grant of probate is required from £5,000 to £50,000. This would result in an estimated additional 30,000 estates per annum not being subject to a fee. The majority (62%) of the remaining estates will pay £300, which is a modest increase from the current fee of £215 for a personal application.

<sup>3</sup> £215 is the personal application fee, but there is also a fee of £155 charged for a grant of probate through a solicitor. An application would not be subject to both these fees.

<sup>4</sup> Fees are currently exempt from estates worth £5,000 or less. The proposed exemption threshold will increase to £50,000

23. The proposal also seeks to remove probate fees from the general remissions scheme. This is because, unlike other civil and family fees, an executor is able to recover the fee after the estate has been released. The executor will be able to access the cash funds of the estate and use them to pay the fee. Based on data<sup>5</sup> from HMRC, we calculate that the average proportion of an estate which is held in cash is 25%<sup>6</sup>. Furthermore, and to make sure that access to justice is not denied and that no executor is put in a position of being liable for a fee they cannot pay, the discretionary power of the Lord Chancellor to grant exceptional remissions will remain in place.

## **Costs of Option 1**

### Transitional costs

#### *Transitional costs to HMCTS*

24. HMCTS expects to incur costs for making amendments to court IT systems and those related to court staff having to spend some time familiarising themselves with the new fees. These one-off transitional costs for HMCTS are expected to be less than £0.1m.

#### *Transitional costs to legal services providers and those individuals applying for probate*

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

### Ongoing costs

#### *Costs to individuals or legal services who apply for probate*

26. Table 1 (above) shows what fee an estate would pay under the current and new probate scheme. Under the new proposals, if an estate is valued at £300,000 or under, court users would be subject to a maximum additional cost of £85. On the other hand if an estate is valued at over £2m they would be subject to a maximum additional cost of £19,785. To calculate the income from the new fee structure, we have multiplied the proposed fees by the number of estates in each band based on data from HMRC. We estimate the total costs to users of the Probate Service, under the fee proposals set out in Table 1, will be £301m. This is an additional annual cost of around £256m.

## **Benefits of Option 1**

### Ongoing benefits

#### *Benefits to HMCTS*

27. As a result of the proposed changes to probate fees, we estimate HMCTS would benefit from additional fee income of £256m per annum in steady state.

#### *Wider benefits to society*

28. Increasing fees for grant of probate above cost would reduce the net costs of operating HMCTS and, therefore, reduce the level of public subsidy provided to HMCTS.

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<sup>5</sup> Data are provided by HMRC based on inheritance tax statistics.

<sup>6</sup> <https://www.gov.uk/government/statistics/inheritance-tax-statistics-table-124-assets-in-estates-by-range-of-net-estate-and-tax-due>

## **Net impact of Option 1**

29. HMCTS is expected to incur transitional costs from implementing the new fee regime (estimated at up to £0.1m). Individuals and solicitors who apply for a grant of probate are also expected to incur negligible costs from familiarising themselves with the new fee structure.
30. On an ongoing basis the proposals are expected to generate increased fee income for HMCTS of around £256m per annum. As the benefit to HMCTS would be offset by the additional cost to users of probate services, the net impact is estimated to be minimal.

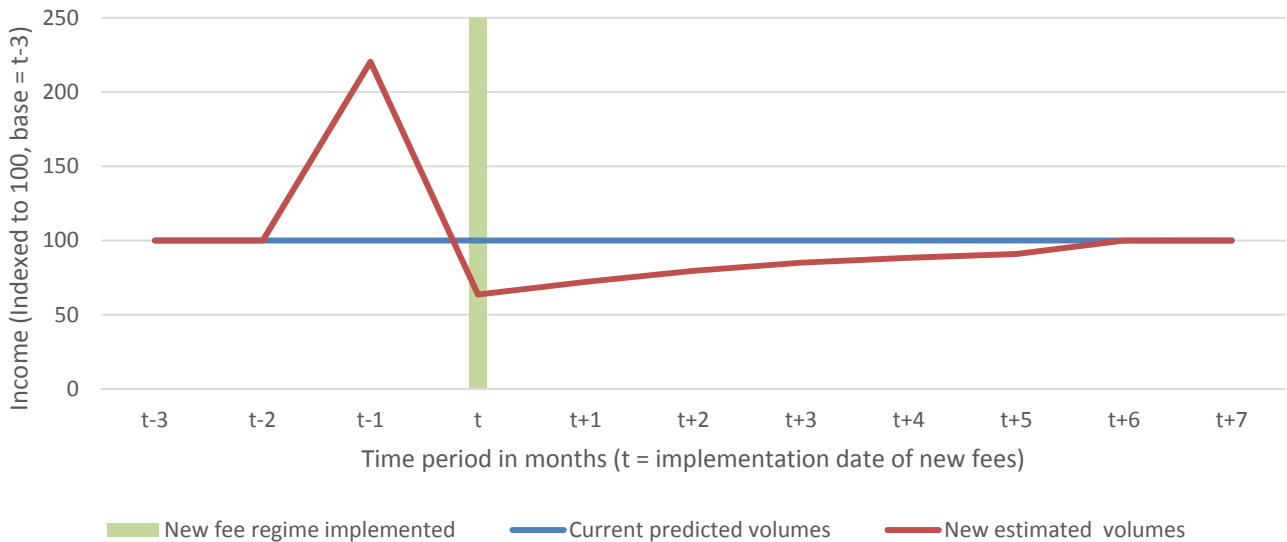
## **F. Risks and sensitivity analysis**

31. There are a number of potential behavioural effects that may occur as a result of implementing the Government's preferred option. These effects may either increase or decrease the additional income stated in paragraph 277 and are examined in more detail in the following paragraphs.

### *The pull-forward effect*

32. Before any planned fee increase, there is a risk that court users will bring their applications forward to avoid paying the increased court fee. This can create a distortion – or blip – in caseloads, followed by a trough in the following months after which demand should return to normal levels.
33. To calculate this 'pull through' effect for the proposed option, we used management information received from the Probate Service based on the time lag between date of death and when applications for probate are normally received. In particular, we assume that:
  - If the date of death was within two weeks of the new fees being implemented, any applications received from this group would be unaffected. This is because these individuals would be unlikely to do this at a time when emotional factors will be foremost in their minds;
  - For deaths occurring between the announcement of the new fee structure to two weeks prior to its implementation, 25% of all probate applicants made by individuals will be made earlier than otherwise in order to pay the lower fees; and
  - 50% of probate applications by solicitors will be made earlier as a solicitor is more likely to reprioritise their work to avoid the higher fees. It is likely they will have more information and a better understanding compared to an individual who personally applies for a grant of probate.
34. Figure 1 illustrates the predicted effect on demand at around the time the new fee structure is announced. The green bar shows the date when the new fee structure is implemented while the blue line is used to compare what would happen if there were no changes to the number of applications. Examining the red line, the spike of applications demonstrates that applications, which would otherwise have been issued after time period "t", have been pulled forward so they incur the old fee. In the following 5 months, demand slowly returns to normal levels.

**Figure 1: The pull forward effect**



35. The impact on additional fee income is the difference between the blue and red lines. In this example, and based on the above assumptions, in year 1 (the period after the new fees are implemented), the loss in income resulting from any pull forward effects is estimated to be around £28m (an 18% decrease), although there is a gain in income in the year before of £5m (an 11% increase on the income expected in the year before implementation).
36. In addition to the above we also examined the volume of probate applications made before and after the previous April 2014 fee change but found little evidence to confirm a pull forward effect. One reason may have been due to the relatively small size of this fee increase but, given the larger increases in probate fees that we are now proposing, any future pull forward effects may be more pronounced. We will explore this risk further during the consultation period to more accurately determine the expected number of applicants likely to bring their application forward.

*Behavioural impact*

37. When the price of a good or service rises, the usual response is for people to demand less of that good or service. With regard to probate applications, however, we feel that the risk of people changing their behaviour, and making fewer applications, is very small. This is because there are few – if any – alternatives to probate and the requirement to obtain a grant of probate is usually out of the hands of the executor. Therefore the volume of applications should remain constant as they are based on death rates in England and Wales which are broadly similar from year to year.
38. A greater potential risk, though, is that the executors involved, or their representatives, may try and decrease the value of the estate by deliberately running down or removing assets. This is a risk both before and after death, but is most likely to materialise afterwards and especially where people die suddenly and no action to undervalue the estate will be possible.
39. We would therefore expect attempts to decrease the value of an estate to occur after death and to focus on assets which are easy to remove, such as cash and personal possessions, with the aim of moving the estate into a lower probate fee band. HMRC statistics on inheritance tax estimate that approximately 25% of an estate is cash, which would reflect a ‘worst case’ scenario of the potential for individuals to decrease the net value of an estate, although this process would be most likely to occur for those estates which are valued at just above the lower limit of a fee band.



40. The implication of this behavioural change, if widespread, is that the fee proposals would generate lower than expected income for HMCTS. These predictions, however, assume that people:
- Know the probate fee structure;
  - Can accurately value their assets;
  - Will have the inclination to do this at a time when emotional factors will be foremost in their minds; and
  - Are minded to do this.
41. To further illustrate this behavioural impact, we modelled scenarios where individuals decrease the value of an estate so that it falls into a lower fee band. In this example, we assume that any behaviour change could affect 10% of estates that are valued at, or just above the lower limit of a fee band, which would lead to a loss of income for HMCTS of £9m.

#### *Inheritance tax interplay*

42. When examining the impact of any behavioural response to an increase in probate fees, we also need to consider the wider picture. From 2017, the inheritance tax threshold is rising<sup>7</sup>, and by 2020-21, some individuals will not have to pay any inheritance tax on the first £1m of an estate.
43. Under the current inheritance tax system, there is a major incentive for estates to be subject to a conservative valuation where the net value is above the tax threshold. The implications are that any incentives individuals currently have to undervalue assets in an estate will decrease as a result of the governments reforms to inheritance tax.
44. We assume that any offsetting impact from the proposed probate fees changes will not be substantial. This is because these fees will still only be a small cost in relation to the size of the estate (fees would be set, on average, at under 1% of their value) compared to inheritance tax which is based on a 40% tax rate on any assets valued over the tax free threshold.
45. There may be some incentive, however, to reduce the value of an estate whose net value is just above the new threshold or just above the lower boundary of a higher fee band. In terms of estates worth at around the threshold level, this incentive already exists and should be reduced as a result of the threshold level increasing far more than the proposed lowest fee payable. For estates valued above the threshold, because each fee band is very broad (i.e., because most estates in a fee band will be some distance in value terms from the bottom boundary for the band), we do not believe these incentives will be strong for the vast majority of estates and so we expect any resulting reduction in income to be minimal.

#### *Probate volumes*

46. Probate volumes are based on applications made in 2012-13, which have been forecast forward for 2016-17 using death rates in the former year. The data were provided by HMRC and are the figures they used in the 2015 Autumn Statement for calculating inheritance tax receipts. Due to changes in the underlying death rate, and any year-on-year fluctuations in the number of deaths, there is a small risk that the number of applications will be slightly higher or lower than what HMRC have estimated and therefore the income generated may differ to what is outlined in Section E.

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<sup>7</sup> <https://www.gov.uk/government/publications/inheritance-tax-main-residence-nil-rate-band-and-the-existing-nil-rate-band/inheritance-tax-main-residence-nil-rate-band-and-the-existing-nil-rate-band>

## **G. Enforcement and Implementation**

47. All fees are payable in advance of the service being provided. The sanction for non-payment is that the service, where appropriate, will not be provided and the case would not be permitted to proceed. This would continue to apply under the options being considered.

## **H. Monitoring and Evaluation**

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

## **I. One In Three Out**

49. The Regulatory Framework Group has considered these proposals and decided that they do not constitute regulation. This means they are out of scope of the One In Three Out framework.