

Title: Courts and Tribunals (Judiciary and Functions of Staff) Act – Overarching Impact Assessment IA No: MoJ1007/2018 RPC Reference No: N/A Lead department or agency: Ministry of Justice Other departments or agencies: Her Majesty's Courts and Tribunal Service (HMCTS) Judicial Office	Impact Assessment (IA)			
	Date: 21 December 2018			
	Stage: Final			
	Source of intervention: Domestic			
	Type of measure: Primary legislation			
Contact for enquiries: Andrew Meads, Ministry of Justice – email: Andrew.Meads@justice.gov.uk				
Summary: Intervention and Options				RPC Opinion: Not Applicable

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2014 prices)	One-In, Three-Out?	Business Impact Target Status
£37.3m	Nil	Nil	Not in scope	Not in scope

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

Reform of the courts and tribunals system will make it easier and swifter for people to resolve disputes and secure justice while generating savings of around £200m by 2023/24. The measures contained in the Courts and Tribunals (Judiciary & Functions of Staff) Act will increase the efficiency of the courts and tribunals by introducing greater flexibility, enabling the judiciary to respond to the changing demands in caseloads of different jurisdictions, so making best use of the existing cohort and their time and expertise. It will also allow appropriately qualified and experienced court and tribunal staff to be authorised to handle uncontroversial, straightforward matters under judicial supervision, so freeing up judges to focus on more complex matters. Government intervention is required because these reforms require primary legislation.

Individual impact assessments (IA) have been prepared for the main provisions within the Act. These IAs also provide greater detail on the nature of each problem under consideration, why government intervention is necessary and the expected impacts of each provision. Where possible at this stage, a summary of the main costs and benefits of each of the legislative measures has been included in this overarching IA.

What are the policy objectives and the intended effects?

The policy objectives are to enable the judiciary to meet the demands of a modern justice system, introducing greater flexibility to respond to the changing demands in caseloads of different jurisdictions and making best use of the existing cohort and their time and expertise. Subject to the decisions of the independent rule committees, greater use of court and tribunal staff who are authorised to deal with uncontroversial, straightforward issues under judicial supervision will further free up judges' time.

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

Two options are assessed in this Overarching Impact Assessment:

- Option 0 – Do nothing: make no legislative changes concerning increased judicial flexibility or the introduction or extension of the role of authorised staff;
- Option 1 – Introduce the legislative measures included in the Courts and Tribunals (Judiciary and Functions of Staff) Act.

Option 1 is the preferred option as it best meets the policy objectives.

Will the policy be reviewed? Please refer to the individual Impact Assessments for details.

Does implementation go beyond minimum EU requirements?	N/A			
Are any of these organisations in scope?	Micro 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, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: Lucy Frazer MP **Date:** 21/12/2018

Summary: Analysis & Evidence

Policy Option 1

Description: Introduce the legislative measures included in the Courts and Tribunals (Judiciary and Functions of Staff) Act.

FULL ECONOMIC ASSESSMENT

Price Base Year 2016/17	PV Base Year 2018/19	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 18.7	High: 46.7	Best Estimate: 37.3

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	4.0 (steady state)	25.9
High	0	9.9 (steady state)	64.9
Best Estimate	0	7.9 (steady state)	51.9

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

The judicial measures in the Act amend existing legislation to allow more flexible deployment, and there are organisational structures already in place to enable this to occur. Therefore, we anticipate that there will not be additional costs associated with implementing these measures. Subject to the decisions of the independent rule committees, HMCTS will acquire costs of around £7.9m per annum from the introduction or widening of the role of authorised staff in the Crown Court, civil jurisdiction, family jurisdiction and tribunals, and from providing safeguards. These will be the salary costs of the authorised staff.

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

The training and recruitment costs for authorised staff may vary by jurisdiction and have not been monetised.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	6.8 (steady state)	44.6
High	0	17.1 (steady state)	111.5
Best Estimate	0	13.7 (steady state)	89.2

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

As the judicial measures will allow judges to be deployed more flexibly, no significant monetised benefits are expected to be associated with these measures. Subject to the decisions of the rule committees, HMCTS will gain benefits of £13.7m per annum from the introduction or widening of the role of authorised staff in the Crown Court, civil jurisdiction, family jurisdiction and tribunals, and from providing safeguards. These benefits will come from authorised staff undertaking some tasks previously completed by the judiciary, such as case progression and case management decisions.

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

The non-monetised benefits associated with the judicial measures include: the increased flexibility to deploy the judiciary to address regional or jurisdictional fluctuations in demand; a faster and more efficient disposal of cases; giving judges a wider range of experience to support their career development; increasing the UK's ability to remain competitive as a centre for arbitration internationally and allowing judges to be deployed to deal with a wider range of cases which are at risk of being disrupted or re-listed. The authorised staff measures will mean the users of the courts and tribunals will experience a more efficient service through swifter resolution of case management decisions. Reforming the justices' clerk role, and having identical provision for authorised staff in both the Crown Court and magistrates' courts, will help implement more effective case allocation and legal leadership of the interface between these courts. Users of the criminal courts will see improved continuity in case management and more efficient case progression across criminal court boundaries.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
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The monetised and non-monetised costs and benefits are based on the key assumptions outlined in the individual IAs which also contain a breakdown of the costs and benefits of each measure in further detail. All assumptions are subject to change, therefore the impacts described in this IA are indicative. The NPV for each measure, where estimated, is presented in Tables 1 and 2 below. Each of these estimates are subject to risks and uncertainties which are described and, where possible, quantified, in each individual IA.

BUSINESS ASSESSMENT (Option 1)

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



Ministry
of Justice

Overarching Impact Assessment

Courts and Tribunals (Judiciary and Functions of Staff) Act

December 2018

A. Introduction

The Court Reform Agenda

1. The Courts and Tribunals (Judiciary and Functions of Staff) Act will support the Government's reform agenda to modernise the courts and tribunals, making them fit for the 21st Century and making access to justice more straightforward, accessible and efficient. The HM Courts and Tribunals Service (HMCTS) Reform Programme is expected to deliver savings of £200m per annum in steady state from 2023/24 (nominal prices), including judicial savings.
2. The Act will also help deliver the Government's manifesto commitment to modernise our courts. Most of the measures in the Act formed part of the Prisons and Courts Bill which fell when Parliament was dissolved in 2017. The measures in the Act previously received strong cross-party support and are strongly endorsed by the senior judiciary.
3. While we introduced the measures in the Courts and Tribunals (Judiciary and Functions of Staff) Act first, the Government is strongly committed to introducing the other court reform measures that were part of the Prisons and Courts Bill. We will therefore introduce further court reform legislation, as and when parliamentary time allows.

Legislative Measures

4. The Act contains legislative measures aimed at increasing the flexibility with which the judiciary can be deployed and to introduce or extend the role of authorised court and tribunal staff.
5. Although delivering nominal savings, the judicial measures are essential to enabling the judiciary to respond to the changing demands of a reformed courts and tribunals system and delivering better services to users. Subject to the decisions of the independent urle committees, the Act will introduce much greater flexibility to the deployment of judges allowing the senior judiciary to respond to the changing demands in caseloads of different jurisdictions and to make the best use of the existing cohort and their time and expertise. The increased flexibility of judicial deployment will also have direct benefits for all users of the courts and tribunals.
6. Based on our current assumptions, the introduction of authorised staff in the Crown Court, the widening of authorised staff roles in the other jurisdictions, and the provision of safeguards, will yield more substantial efficiencies worth around £5.8m per annum. These benefits will come from authorised staff undertaking some tasks previously completed by the judiciary, such as case progression and case management decisions.
7. This overarching Impact Assessment (IA) explains the policy rationale and objectives which underpin each specific legislative measure in the Act and describes the key stakeholders who will be affected. It then provides an overview of the impact of each of the legislative measures on society, focusing on the monetised and non-monetised impacts. As all the underlying assumptions are subject to change and to further decisions, the impacts described here and in the individual IAs are indicative. Further detailed discussion of each of the legislative measures are set out in the individual IAs.

B. Summary

8. The Act is part of our wider reform agenda to modernise the courts and tribunals. We are working alongside the judiciary to deliver far-reaching modernisation of the justice system, making access to justice quicker and easier for all. We want everyone who engages with the system to have the finest justice system in the world available to them and we are investing over £1 billion to transform our courts and tribunals - making them more convenient, easier to use, and providing better value for the taxpayer.
9. While we can achieve much within the existing legislative framework, wholesale reform requires new legislation. The Courts and Tribunals (Judiciary and Functions of Staff) Act is a first step in delivering that reform. The specific legislative measures in the Act:
 - Allow appropriately qualified and experienced staff in the courts and tribunals to be authorised to handle uncontroversial, straightforward matters under judicial supervision. This will free up judges to focus on the more complex matters.
 - Give the relevant procedure rule committees the power to determine which functions authorised staff may or may not undertake in their respective jurisdiction, and what qualifications these staff will need.
 - Apply the statutory independence, and the immunities that currently apply to justices' clerks, to all authorised court and tribunal staff when exercising judicial functions.
 - Remove the post of justices' clerk from statute.
 - Enable more flexible deployment of the judiciary, including across jurisdictions, allowing judges to gain experience of different types of cases, which will help with their career progression. This will also allow the judiciary more flexibility when it comes to handling case backlogs.
 - Remove the restriction on a judge being the President of more than one Chamber of the First-tier Tribunal or Upper Tribunal.
 - Amend the title of the Chief Bankruptcy Registrar to Chief Insolvency and Companies Court Judge to bring it line with the renamed court.
 - Extend the Lord Chancellor's power in the Courts Act 2003 to amend certain judicial titles by secondary legislation to correct an anomaly preventing some judicial titles from being amended by Ministerial Order.
10. The judicial measures in the Act are essential to enabling the judiciary to respond to the changing demands of a reformed courts and tribunals system and delivering better services to users. The Act will introduce much greater flexibility to the deployment of judges to meet the demands of a modern justice system – that means empowered judicial leaders to help implement reforms, greater flexibility to allow the judiciary to respond to the changing demands in caseloads of different jurisdictions and making best use of the existing cohort and their time and expertise.
11. Subject to the decisions of the rule committees, the introduction or extension of the role of authorised staff measures in the Act will further free up judges' time to focus on more complex cases by allowing appropriately qualified and experienced staff across all jurisdictions to handle uncontroversial, straightforward matters under judicial supervision.

C. Overall Policy Rationale and Objectives

12. The conventional economic rationales for government intervention are based on efficiency and equity arguments. The government may consider intervening if there are failures in the way markets operate (e.g., monopolies overcharging consumers) or where there are failures with existing government interventions (e.g., waste generated by misdirected rules). The proposed new interventions should avoid creating a further set of disproportionate costs and distortions. The government may also intervene for equity (fairness) and re-distributional reasons (e.g., to reallocate goods and services to more the needy groups in society).
13. The principle rationale for the legislative measures assessed in this overarching IA is efficiency. The measures in the Courts and Tribunals (Judiciary and Functions of Staff) Act will increase the efficiency of the courts and tribunals by introducing greater flexibility to allow the judiciary to respond to the changing demands in caseloads of different jurisdictions and making best use of the existing cohort and their time and expertise. Based on our current assumptions, it will also introduce or extend the roles of some court and tribunal staff to be authorised to handle uncontroversial, straightforward matters under judicial supervision, which will free up judges to focus on more complex matters.
14. The associated policy objectives are described in the individual IAs for each measure. In summary, the main policy objective of the judicial measures is to build on statutory provisions to allow further flexible deployment in certain areas. This will allow the judiciary to respond to changes or anticipated changes in demand in certain areas, such as the growth in demand for judicial arbitration work for the Chancery Division of the High Court, Judicial Review work in the Upper Tribunal's Asylum & Immigration Chamber and to respond to fluctuations in demand between tribunals.
15. The above will be supported, based on our current assumptions and subject to the decisions of the rule committees, by the introduction or extension of the use of authorised staff in the Crown Court, civil jurisdiction, family jurisdiction and tribunals and from providing safeguards. The users of the courts and tribunals will experience a more efficient service through the swifter resolution of case and case management decisions.

D. Affected Stakeholder Groups, Organisations and Sectors

16. A list of the main groups and stakeholders who will be affected by the proposals described in this overarching IA is shown below:
 - The Ministry of Justice (MoJ), HMCTS and the Judicial Office;
 - The judiciary, including judges who preside over proceedings in the criminal and civil courts and tribunals;
 - Court and tribunal staff, including Justices' Clerks;
 - Civil, family and criminal court and tribunal users including defendants, victims and their families, witnesses, members of the public and businesses;
 - Taxpayers, who ultimately meet the costs of the justice system; and
 - Wider society who use the criminal and civil courts and tribunals.

E. Description of Legislative Measures

Base Case

17. In accordance with IA guidance, the legislative measures in the Act have been assessed against a defined 'base case'. These are summarised below.

- There would be no legislative changes to judicial deployment; and
- There would be no legislative changes made to the use of authorised staff.

Legislative measures

Authorised Staff

18. **Staff authorised to exercise judicial functions.** HMCTS staff can already be authorised to exercise judicial functions in almost every court or tribunal, up to and including the High Court and Upper Tribunal. The Act will ensure that there is a robust approach to authorisation, introduce an underpinning accountability framework, and provide a statutory guarantee of independence for staff in all jurisdictions when undertaking this kind of work.

19. The Act also addresses the current gaps in provision for authorised staff roles and ensure that every power being exercised by these roles is subject to scrutiny by appropriate jurisdictional experts. Subject to the decisions of the rule committees and based on our current assumptions, this measure will enable greater and more effective use of authorised staff and so make the best use of judicial resources by freeing up judges and magistrates to focus their time on more complex and contentious matters. This will improve the efficiency and effectiveness of the courts.

Modernising judicial deployment and terms and conditions

20. **Judicial deployment and flexibility.** Increasing the flexibility of judicial deployment is key to enabling the judiciary to respond to the changing demands of a reformed court system. The Lord Chief Justice and Senior President of Tribunals already have powers but these measures are designed to target several important areas where the more flexible deployment of the judiciary would be beneficial. The measures in the Act therefore:

- Expand the range of courts/tribunals in which Deputy High Court Judges can temporarily sit;
- Make Recorders deployable to the Upper Tribunal;
- Enable senior employment judges to sit as judges in the First-tier Tribunal and Upper Tribunal;
- Remove the restriction on a judge being the President of more than one Chamber of the First-tier Tribunal and Upper Tribunal;
- Allow the Presidents of Employment Tribunals in England and Wales and Scotland to sit in the Employment Appeal Tribunal (EAT);
- Extend the range of High Court Judges who can sit as judge-arbitrators;

- Change the title of the Chief Bankruptcy Registrar to Chief Insolvency and Companies Court Judge; and
- Extend the Lord Chancellor’s power to amend certain judicial titles.

F. Cost and Benefit Summary

21. This overarching IA summarises the main monetised and non-monetised impacts of the above legislative measures on individuals and groups in the UK. The costs and benefits of each measure have been compared to the “do nothing” option. IAs place a strong emphasis on valuing costs and benefits in monetary terms. However, there are often important aspects of a policy that cannot readily be monetised – e.g. the effects on particular groups of society or changes in equity and fairness. Furthermore, as all of the assumptions on which these impacts are based are subject to change, the impacts described here and in the individual IAs (whether monetised or non-monetised) can only be indicative and should not be regarded as firm predictions.
22. More detailed analysis of the costs and benefits for each of the legislative measures, as well as the more specific policy objectives, can be found in the individual IAs. These impacts are based on our modelling and on HMCTS data. However, to minimise the uncertainty concerning the final shape that some of the proposals will take, in some cases we have used our best estimates to estimate the impacts of some of the measures. These best estimates are kept under review and may be subject to change. The expected impacts of these measures are summarised in tables 1 and 2 below.
23. These impacts have been assessed using HM Treasury guidance. To make our estimates for each measure comparable, we have adopted the following conventions:
 - Monetised costs and benefits are stated in 2016-17 prices;
 - The Net Present Value (NPV) of each measure has been calculated for a ten-year period from 2018-19 using a 3.5 per cent discount rate;
 - Where appropriate, optimism bias has been applied. The rationale for the chosen levels can be found in the IAs for the individual measures;
 - Unless otherwise stated, the annualised costs or savings are those which would be achieved in ‘steady state’ (i.e. when each measure is fully in operation).
24. As the measures assessed in this IA regarding flexible judicial deployment are intended to allow judges to be deployed more flexibly to deal with existing demand. However, because organisational structures already exist to allow this to occur, it is not expected that there will be significant monetised costs or benefits associated with these measures.
25. In the case of the measures concerning authorised staff, the impacts in this overarching IA are based on our current assumptions, which may be subject to change, and depend on the decisions of the independent rule committees concerning which functions authorised persons will be able to perform. As a result, the monetised impacts of this option should be seen as indicative only. The individual IA for these measures contain sensitivity analyses which provide further information on the expected impacts based on alternative assumptions concerning the potential deployment of authorised staff in each jurisdiction.

Net Impact: Authorised Staff

26. Based on our current assumptions, Table 1 summarises the net impact of the legislative measures concerning the introduction of Authorised Staff.

Table 1 : Summary of Main Impacts, Best Estimates, Authorised Court Staff				
		Costs	Benefits	NPV
Authorised court and tribunal staff	<i>Monetised</i>	<ul style="list-style-type: none"> HMCTS will acquire additional annual salary costs of around £7.9m per annum from introducing or widening of the role of authorised court and tribunal staff in the Crown Court, civil jurisdiction, family jurisdiction and tribunals. 	<ul style="list-style-type: none"> HMCTS will gain benefits worth £13.7m per annum from introducing or widening of the role of authorised court and tribunal authorised staff in the Crown Court, civil jurisdiction, family jurisdiction and tribunals as they will perform some tasks previously completed by the judiciary, such as case progression work. 	£37.3m
	<i>Non-Monetised</i>	<ul style="list-style-type: none"> HMCTS will have training and recruitment costs for authorised court and tribunal staff. These may vary by jurisdiction and have not been monetised. 	<ul style="list-style-type: none"> Court and tribunal users will benefit from a more efficient service through the swifter resolution of case management decisions. Reforming the justices' clerk role, and having identical provision for authorised staff in both the Crown Court and magistrates' courts will facilitate more effective case allocation and legal leadership in the interface between these courts. Authorised court and tribunal staff will be independent of the Lord Chancellor when exercising any judicial functions. 	Positive
Net Impact	<i>Monetised</i>	£7.9m	£13.7m	£37.3m

Net Impact: Flexible Judicial Deployment

27. Table 2 summarises the net impact of the legislative measures concerning flexible judicial deployment.

Table 2 : Summary of Main Impacts, Best Estimates, Flexible Judicial Deployment				
		Costs	Benefits	NPV
Flexible Deployment of Judges	<i>Monetised</i>	<ul style="list-style-type: none"> As these measures amend existing legislation to allow more flexible judicial deployment, no significant additional monetary costs are expected. 	<ul style="list-style-type: none"> As these measures amend existing legislation to allow more flexible judicial deployment, no significant additional monetary costs are expected. 	None
	<i>Non-Monetised</i>	<ul style="list-style-type: none"> No significant additional non-monetised costs are expected. 	<ul style="list-style-type: none"> There will be increased flexibility to deploy the judiciary to address regional or jurisdictional fluctuations in demand. This will allow for the faster and more efficient disposal of cases. Judges will gain a wider range of experience in different jurisdictions which will also support their career development. The UK will be helped to remain competitive as a centre for international arbitration. There will be less risk of cases being disrupted or re-listed due to unforeseen events. 	Positive
Net Impact	<i>Monetised</i>	None	None	N/A

G. Assumptions and Risks

28. As noted above, all of the above estimates are based on assumptions and are therefore subject to an element of risk. The individual IAs for each measure provide further information on these for each specific legislative measure but all assumptions are subject to change, therefore the impacts described here and in the individual IAs are indicative.
29. Many of our proposals rely on positive engagement with key partners across the justice system. These include other justice agencies, the judiciary, the rule committees, the legal profession and the third sector. We have engagement strategies in place but, in some areas, the MoJ is nevertheless dependent on the co-operation of others.

H. Wider Impacts

Equalities

30. While the options described in this overarching IA would apply to all, it is important to consider whether they would put those sharing a protected characteristic at a particular disadvantage when compared to those who do not share that characteristic. Such an effect could amount to indirect discrimination.
31. In line with our Public Sector Equality Duty (PSED) responsibilities the MoJ have prepared two equality statements that should be read in conjunction with this IA. On the basis of the available data and evidence we do not consider that the legislative measures contained in the Act are likely to result in any unlawful discrimination and are likely to be of benefit to court users, the judiciary and staff.

Environmental Impact

32. We have also considered the potential environmental impact of the measures. In our view, there are no environmental impacts associated with the measures in this IA.

Welsh language

33. We have also considered the implications for Welsh language in the development of the Act and published a summary of our proposals on the Government's website.

I. Implementation

34. The IAs for each of the specific options described in this document provide more information about how the preferred options would be implemented.

J. Monitoring & Evaluation

35. The IAs for each of the specific options described in this document provide more information about how the preferred options would be monitored and evaluated.