

Title: The Access to Justice Act 1999 (Destination of Appeals) (Family Proceedings) (Amendment) Order 2016 IA No: MoJ007/2016 RPC Reference No: Lead department or agency: Ministry of Justice Other departments or agencies:	Impact Assessment (IA)			
	Date: 18/03/2016			
	Stage: Final			
	Source of intervention: Domestic			
	Type of measure: Secondary legislation			
Contact for enquiries: Aaron Manku (aaron.manku@justice.gsi.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
£m	£m	£m	Not in scope	Not a regulatory provision

What is the problem under consideration? Why is government intervention necessary?
 Currently appeals in certain family cases are heard by up to 3 senior judges. The Government believes, however, that in most cases a single specialist judge could hear these cases just as effectively. We are proposing the re-routing of appeals away from the Court of Appeal be extended so that it applies to decisions of the family court made by Circuit Judges and Recorders in all proceedings (including appeals from decisions made relating to contempt of court) except those made in proceedings under Part 4 or Part 5 of the Children Act 1989 (certain public law appeals) or under the Adoption and Children Act 2002 (including adoption and placement order appeals) or decisions which were themselves made on an appeal.

What are the policy objectives and the intended effects?
 Appeals must be dealt with in ways which are proportionate to the grounds of complaint and the subject matter of the dispute whilst ensuring effective access to justice. By moving some work to the High Court, the Court of Appeal will be better able to manage cases of appropriate weight for the court. Rather than a hearing before a court of up to 3 Lord Justices of Appeal, appeals will be heard by a single specialist High Court Judge sitting in the Family Division of the High Court. This will reduce the senior judicial resource required for these type of appeals and there may be a reduction in the time it takes for appeals from decisions of Circuit Judges. It is hoped this may also benefit the flow of cases in the Court of Appeal.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)
 Option 0 - Do nothing.

 Option 1 - Re-route certain specified appeals from decisions of Circuit Judges and Recorders in the family court so they are heard in the Family Division of the High Court by a High Court Judge instead of being heard by a court of up to 3 Lord Justices of Appeal in the Court of Appeal.

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

Will the policy be reviewed? It will not be reviewed. If applicable, set review date: N/A					
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 (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 Minister: Caroline Dinenage Date: 12/04/2016

Summary: Analysis & Evidence

Policy Option 1

Description: Re-route family appeals so that in certain cases they are heard in the Family Division of the High Court by a High Court Judge instead of being heard by a court of up to 3 Lord Justices Of Appeal in the Court of Appeal.

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: N/A

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

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

There are not expected to be any monetised costs in relation to this option.

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

It is possible those parties involved in the cases to be re-routed to the Family Division of the High Court perceive their case as being seen as less important than those which are to remain in the Court of Appeal. This can be mitigated by the fact that these cases will still be heard by experienced and senior judges in the Family Division of the High Court. There are not expected to be any other non-monetised costs in relation to this measure.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	N/A	N/A	N/A

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

No monetised benefits have been identified in relation to this measure.

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

This change will reduce the senior judicial resource required for the appeals routed to the High Court. It is also hoped that by re-routing certain appeals there may be a reduction in the time taken for decisions of Circuit Judges or Recorders in the proceedings concerned to be heard. By reducing the number of appeals going to the Court of Appeal, this change may also benefit the flow of cases in that court, allowing for more expeditious determination of appeals in public law children hearings.

Key assumptions/sensitivities/risks	Discount rate (%)	N/A
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There are no key assumptions, sensitivities or risks associated with this change. Case volumes, durations and outcomes are assumed to remain unchanged as a result of this option.

BUSINESS ASSESSMENT (Option 1)

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

Evidence Base (for summary sheets)

Problem under consideration

1. Section 31K of the Matrimonial and Family Proceedings Act 1984 provides that if any party to any proceedings in the family court is dissatisfied with the decision of the court, that party may appeal from it to the Court of Appeal. Section 13 (2A) of the Administration of Justice Act 1960 provides that the route of appeal against decisions of the family court relating to contempt of court is also to the Court of Appeal. Appeals must be dealt with in ways which are proportionate to the grounds of complaint and the subject matter of the dispute whilst ensuring effective access to justice.
2. The Lord Chancellor has power under section 56 of the Access to Justice Act 1999 Act to make an Order altering the routes of appeal from decisions of the family court away from the Court of Appeal. Such an Order has to be approved by both Houses of Parliament. The Lord Chancellor exercised the power under section 56 of the 1999 Act in 2014 to enable appeals from certain types of judges or other office holders to be dealt with in the family court instead of the Court of Appeal (see the Access to Justice Act 1999 (Destination of Appeals) (Family Proceedings) Order 2014 (S.I.2014/602) (“the 2014 Order”). From the judges currently deployed in the family court, it is appeals from decisions of district judges and those judges or other office holders below that level which are appealed to the family court instead of the Court of Appeal. In making the 2014 Order the Lord Chancellor ensured that the historical position of directing these appeals away from the Court of Appeal in family proceedings was not altered when the family court came into being.
3. Ministry of Justice (MoJ) Civil Justice Statistics Quarterly (published on 4 June 2015) shows that family related appeals (from the County Court pre Single Family Court) to the Court of Appeal have increased by over 200% between 2008 and 2014 (from 38 to 119). Because of this increasing work load, the Lord Chancellor consulted on the proposal that, with permission, appeals from decisions of Circuit Judges or Recorders sitting in the family court shall lie to a judge in the Family Division of the High Court, the next court up, instead of the Court of Appeal and what, if any, exceptions there should be to that proposal. As well as the statutory duty to consult the Judicial Heads of Division, the following stakeholder groups were also consulted:
 - Council of HM Circuit Judges
 - Association of District Judges
 - The Magistrates Association
 - The Chief Magistrate
 - The Bar Council
 - The Association of Lawyers for Children
 - The Justices’ Clerks Society
 - The Family Law Bar Association
 - The Law Society
 - Resolution
4. The consultation responses broadly supported the proposal to route appeals from decisions of Circuit Judges and Recorders sitting in the family court in certain family proceedings to be heard by a High Court Judge in the High Court, rather than being heard by the Court of Appeal. Further details relating to the consultation responses can be found in the Explanatory Memorandum.

Policy Objectives

5. Appeals must be dealt with in ways which are proportionate to the grounds of complaint and the subject matter of the dispute whilst ensuring effective access to justice. By moving some work to the High Court, the Court of Appeal will be better able to manage cases of appropriate weight for the court.

6. It is also hoped that by re-routing certain appeals to the High Court instead of the Court of Appeal, there may be a reduction in the time it takes for appeals from decisions of Circuit Judges in the proceedings concerned to be heard.

Rationale for Intervention

7. The conventional economic approaches to Government intervention are based on efficiency or equity arguments. Governments may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or there are strong enough failures in existing Government interventions (e.g. waste generated by misdirected rules) where the proposed new interventions avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and distributional reasons (e.g. to reallocate goods and services to more needy groups in society).
8. The rationale for intervention in this case is efficiency as, by moving some work to the High Court, the Court of Appeal will be better able to manage cases of appropriate weight for the court so making better use of existing judicial resources.

Main Affected Groups

9. The main groups who will be impacted or affected by these proposals are:
 - HM Courts and Tribunals Service (HMCTS)
 - Legal professionals and the parties involved in appeals.
 - The Judiciary

Description of options considered

10. 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 preferred option.
11. The costs and benefits of the option are then compared to an Option 0, the 'do nothing' or baseline scenario, where all appeals from the family court are heard in the Court of Appeal (except those already re-routed by the 2014 Order). As this option is compared with itself its costs and benefits will be zero, as will be its Net Present Value (NPV).
12. For the purposes of this IA we have assumed that case volumes, case durations, and case outcomes will remain the same. We have assumed no impact on the volume of any further onward appeals. Existing appeals will also be unaffected.
13. The options considered in this IA are as follows:
 - Option 0 - Do nothing.
 - Option 1 - Re-route certain and specific family appeals from Circuit Judges and Recorders so they are heard in the Family Division of the High Court by a High Court Judge instead of being heard by a court of up to three Lord Justices of Appeal in the Court of Appeal.
14. Option 1 is the preferred option as this best meets the policy objectives.

Option 0

15. At present, these appeals from the family court are heard by a court of up to three Lord Justices of Appeal. This represents a significant use of judicial resources which are not always proportionate to the case under consideration.
16. Under this option, as the current route for all appeals from the family court would remain the same, there would no scope for making efficiencies in the use of senior judicial resources.

Option 1

17. Under this option certain appeals would be heard by a single specialist High Court Judge sitting in the Family Division of the High Court. This will reduce the senior judicial resource required for hearing these types of appeals.
18. By reducing the number of appeals going to the Court of Appeal, this change could also benefit the flow of cases in that court, allowing for more effective and expeditious determination of appeals in public law children proceedings.
19. The re-routing of appeals will apply to appeals from decisions of Circuit Judges and Recorders sitting in the family court, in all proceedings except:
 - a. Decisions made on appeal to the family court (to not create an extra level of appeal);
 - b. Decisions made in proceedings under Part 4 or 5 of the Children Act 1989 (certain public law appeals, such as orders placing a child in the care of a local authority);
 - c. Decisions under the Adoption and Children Act 2002 (including adoption and placement order appeals);
 - d. Decisions relating to contempt of court linked to the above proceedings.
20. Any appeal from the decision of a Circuit Judge or Recorder, whether to the High Court or the Court of Appeal, will continue to be subject to any relevant permission requirement. It will still be possible for appeals, with permission, to go from the Family Division of the High Court to the Court of Appeal. The leapfrogging provisions in section 57 of the Access to Justice Act 1999 enabling the assignment of appeals to the Court of Appeal will still apply. For example, the President of the Family Division has the power to direct that an appeal which will be heard by the High Court should be heard instead by the Court of Appeal.
21. *An example of the effect of this change would be where Mr and Mrs Smith who both have significant health problems cannot agree where John their 10 year old boy should live after their divorce. A Circuit Judge decides that John should live with his mum and see his dad at weekends. Mr Smith does not accept this decision and is given permission to appeal. As a result of this change the appeal would be heard in the Family Division of the High Court instead of the Court of Appeal.*

Proceedings excepted from the new routing of appeals

22. Certain appeals will continue to lie to the Court of Appeal due to the serious consequences of the state intervening in a family's life and the complexities arising in these proceedings are considered to merit these appeals continuing to be heard by the Court of Appeal. The relationship between parent and child and other family members may be completely severed and the child's status changed by adoption. Proceedings under paragraph 19 of Schedule 2 to the 1989 Act are those relating to arrangements to assist a child in care to live abroad and are also to be excepted from this change. Applications for these orders are usually heard in the care proceedings and so appeals against a decision granting or refusing the application should follow the same route as care proceedings to the Court of Appeal.

23. Other proceedings included in the definition of “public law proceedings” for the purposes of the Family Procedure Rules 2010 are not included in the exceptions. These proceedings do not fall within Parts 4 or 5 of the Children Act 1989 and do not involve the same degree of state intervention; it is intended that the new route of appeal to the High Court should apply to such proceedings.
24. *An example of the effect of one of the exceptions is where the decision in Mr and Mrs Smith’s case is made by a district judge, sitting in that capacity. Mr Smith’s appeal would then be to a Circuit Judge, with permission. Any further appeal against the Circuit Judge’s decision in these circumstances would be to the Court of Appeal with permission as it is now, and will not be affected by this change.*
25. *Another example would be where a local authority alleges that Mr and Mrs Jones have injured their 2 year old toddler, Jane, by hitting and shaking her and bring care proceedings to remove Jane from their care. A Circuit Judge decides that the local authority has established its case and makes a care order in respect of Jane and an order allowing her to be placed for adoption. Mr and Mrs Jones have new evidence that the injuries were accidental and are given permission to appeal. The appeal against the making of the care and placement order will continue to be heard by the Court of Appeal as now and will not be affected by the this change.*
26. This change does not affect routes of appeal from judges of the family court other than Circuit Judges or Recorders or the judges who hear appeals in the family court as provided by Rules 5 to 7 of the Family Court (Composition and Distribution of Business) Rules 2014 (S.I. 2014/840).
27. *For example, if a gatekeeping team had decided to allocate Mr and Mrs Smith’s case to a district judge who made the decision for John to live with mum, then with permission Mr Smith’s appeal would be heard by a Circuit Judge sitting in the family court as now. If the team had allocated the case to a High Court judge sitting in the family court then the appeal with permission would be heard by the Court of Appeal as now.*

Costs of Option 1

Transitional Costs

28. There will be small transitional monetary cost for HMCTS who will require staff to be aware of these changes. These changes will affect listing office staff in particular. There will also be costs associated with updating and printing new court forms to reflect these changes. Guidance and leaflets will also be produced for HMCTS staff and parties involved in cases, updating them on the correct routes of appeal. None of these costs are expected to be significant.

On-Going Costs

Legal Professionals and the Parties Involved

29. It is possible those parties involved in the cases to be re-routed to the Family Division of the High Court may perceive their case as being seen as less important than those which are to remain in the Court of Appeal. This can be mitigated by the fact that these cases will still be heard by experienced and senior judges in the Family Division of the High Court. This option has been considered preferable as it allows judicial resource to be allocated in the most efficient way.

HMCTS

30. It is anticipated that the workload of the Family Division of the High Court will rise due to this change although any rise in workload will be small. The senior judiciary are working with MoJ Policy and HMCTS to make sure that processes and procedures are put in place as to how these appeals are allocated.

Benefits of Option 1

31. No transitional benefits have been identified for this option.

Legal Professionals and the Parties Involved

32. It is expected that by re-routing certain appeals there may be a reduction in the time it takes for appeals from decisions of Circuit Judges or Recorders in the proceedings concerned to be heard. This will benefit the parties involved and will lead to quicker outcomes for children.

HMCTS

33. This change will reduce the senior judicial resource required for appeals routed to the Family Division of the High Court. Appeals will continue to be dealt with in ways which are proportionate to the grounds of complaint and the subject matter of the dispute whilst ensuring effective access to justice. Appeals being heard in the Family Division of the High Court will continue to be heard by expert senior judges.

34. By reducing the number of appeals going to the Court of Appeal, this change may also benefit the flow of cases in that court, allowing for more expeditious determination of appeals in public law children hearings as well as the other cases that the Court of Appeal hears.

Net Impact of option 1

35. The costs associated with this transition are minimal. The re-routing of certain appeals will allow senior judicial resource to be allocated proportionately. This, along with the potentially quicker outcomes for children mean that the benefits of this change should outweigh the costs.

Implementation

36. HMCTS and the judiciary will be working with MoJ Policy to implement this change, which is planned to take effect in summer 2016.

Planned Review

37. The Ministry of Justice will monitor the impact of these amendments by engaging with the senior judiciary, HMCTS and Family Procedure Rule Committee.