Title: Implementing the new family court **IA No:** MoJ 224 **Lead department or agency:** Ministry of Justice (MoJ) **Other departments or agencies:** n/a	**Impact Assessment (IA)** **Date:** 28/11/2013 **Stage:** Final **Source of intervention:** Domestic **Type of measure:** Secondary legislation **Contact for enquiries:** Wendi Mitchell Wendi.mitchell@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** (EANCB on 2009 prices)	**In scope of One-In, Two-Out?**	**Measure qualifies as**
£m	£m	£m	No	N/A

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

Currently, there are three separate tiers of court dealing with family matters. This structure is complicated and inflexible. It is difficult for court users to navigate, and does not allow for flexible, efficient deployment of judicial and HM Courts and Tribunals Service (HMCTS) resources. The need to transfer cases between the three tiers of court can cause delay. Further, some family matters are currently not covered by the single set of family court rules, adding to complexity and causing confusion for court users. Only the government can pass secondary legislation to make the changes that are necessary, and to implement in practice certain changes which have already been made by primary legislation.

What are the policy objectives and the intended effects?

We want a simpler, more efficient court to hear family law cases The policy objective is to create a court which is flexible, which allows for efficient use of judicial and court resources, and which is easier for users to navigate. It should reduce delay and, where possible, enable increased judicial continuity and leadership in dealing with cases. It should be able to deal with all relevant family matters, and in practice should be the only court able to deal with the majority of family matters. As part of improvements to efficiency, there should be a reduced need to transfer cases between courts and appeals should be heard at the most appropriate level.

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

Option 0 = Do nothing (Base case)

Option 1a = Make changes to existing law so that it will reflect the creation of the new family court; change the rules of court so that there is a single set of court rules for family cases.

Option 1b = Enable justices' clerks and their assistants to carry out certain functions of the family court, including certain additional functions to those they are currently authorised to perform, and enable them in most instances to carry out functions regardless of the level of judge to which the case is allocated.

Option 1c = Change the law so that certain appeals will be heard in the family court rather than a higher court.

The preferred option is to implement options 1a, 1b and 1c together as it will contribute to the creation of a new, more flexible and efficient family court. They cannot in practice be implemented independently of each other.

Will the policy be reviewed? It **will** be reviewed. **If applicable, set review date:** 02/2019

Does implementation go beyond minimum EU requirements?			N/A		
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 Minister: Lord McNally Date: 16 December 2013

Summary: Analysis & Evidence

Policy Option 1a

Description: Make consequential changes to existing law so that it will reflect the creation of the new family court; change the rules of court so that there is a single set of court rules for family cases.

FULL ECONOMIC ASSESSMENT

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

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low				
High				
Best Estimate				not quantified

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

It has not been possible to monetise the identified costs, and the reasons for this are explained in detail in the evidence base. A qualitative description is provided below.

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

MoJ would face certain costs associated with judicial training and changes to the family court ICT systems. HMCTS may also face certain costs associated with handling in the family court the registration and enforcement of maintenance orders which are currently handled in other courts.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low				
High				
Best Estimate				not quantified

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

It has not been possible to monetise certain efficiency savings to HMCTS and the Judiciary, and the reasons for this are explained in detail in the evidence base.

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

We expect some benefits relating to fewer formal transfers taking place between courts, which reduces administrative work and case delay.
Court users could benefit from fewer formal transfers if less administrative work being spent on transfer applications could be translated into shorter case durations.
We also expect some benefits to HMCTS and to court users as a result of the way applications for financial remedy are to be handled in the new court.

Key assumptions/sensitivities/risks **Discount rate (%)** N/A

We have assumed that work load, case outcomes, case duration, and costs per case to HMCTS and the LAA remain unchanged. Where changes to the duration of a case or costs per case result from the proposed measures, we have identified this in the costs and benefits section in the evidence base.

BUSINESS ASSESSMENT (Option 1a)

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

Summary: Analysis & Evidence

Policy Option 1b

Description: Enable justices' clerks and their assistants to carry out certain functions of the family court, including certain additional functions to those they are currently authorised to perform, and enable them in most instances to carry out functions regardless of the level of judge to which the case is allocated.

FULL ECONOMIC ASSESSMENT

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

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low				
High				
Best Estimate				**not quantified**

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

There will be costs to HMCTS of approximately £0.16m if justices' clerks and their assistants perform functions relating to undefended divorce cases (cases in which, essentially, the parties agree that they should divorce and there are no complicating factors).

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

There will be training costs associated with familiarising justices' clerks and their assistants with their new functions. There will be additional costs to HMCTS of an increase of workload to justices' clerks and their assistants where they assist District and Circuit Judges in procedural work. It has not been possible to quantify the amount of this work.

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

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

There will be efficiency savings to HMCTS and the judiciary of approximately £0.54m where judges are freed up from box work relating to undefended divorce cases.

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

We also expect efficiency savings where justices' clerks take over some procedural work from judges. Since the amount of this work is uncertain, and since the deployment of justices' clerks and their assistants in this role will be gradual, it has not been possible to quantify these benefits.

Key assumptions/sensitivities/risks **Discount rate (%)** N/A

We have assumed that it would take a justices' clerk or their assistant the same amount of time to consider an undefended divorce application as it would a District Judge. We have also assumed that the number of decrees nisi and decrees absolute remains at the 2012 level, that justices' clerks and their assistants will perform box work in 100% of undefended divorce cases, and that there are no changes to court fees. There is a risk that HMCTS will not immediately or ultimately realise some of the efficiency savings.

BUSINESS ASSESSMENT (Option 1b)

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

Summary: Analysis & Evidence

Policy Option 1c

Description: Bring forward legislation concerning the route of appeals against decisions of judges sitting in the new family court.

FULL ECONOMIC ASSESSMENT

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

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low				
High				
Best Estimate				**not quantified**

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

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

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

There are not expected to be any 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				
High				
Best Estimate				

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'

There is expected to be a benefit in continuity between the existing system and the new system. In addition, there is a general benefit associated with this measure, in that it helps enable the implementation of the new family court as a whole.

Key assumptions/sensitivities/risks **Discount rate (%)** N/A

There are no key assumptions, sensitivities or risks associated with this proposal, other than the general assumptions outlined in the evidence base.

BUSINESS ASSESSMENT (Option 1c)

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

Evidence Base (for summary sheets)

1. Introduction

1. The three policy options within this Impact Assessment relate to four measures contained in four separate Statutory Instruments (SIs). Implemented together, these measures will help to create a single family court for England and Wales. Two of the Statutory Instruments are covered by a single policy option (option one) for ease.
2. The four SIs covered in this Impact Assessment (IA) form part of a package of measures which, taken as a whole, will create the new family court. Those remaining SIs which are not covered by this IA will be covered by a separate IA; this will be published when the relevant SIs are presented to Parliament.
3. It should be noted that, in many cases, the SIs implement or add detail to a provision contained in primary legislation. Readers may find it helpful to refer to IA number MoJ140[1]. This provides useful background on the primary legislation which creates the new family court.
4. The first policy option covered by this IA seeks to make consequential changes to existing law so that it reflects the structure of the new family court rather than the old three-tier structure of courts dealing with family matters, by the making of a Consequential Amendments Order. The first measure also changes the existing rules of court to create a comprehensive set of more efficient procedures for dealing with family cases. Any currently different procedures for each tier of court will be aligned for the family court. The second measure seeks to make it possible for justices' clerks and their assistants to do more work in the family court, and to do certain work no matter what level of judge a case is allocated to. The final measure seeks to replicate the current handling of appeals in the family courts.
5. This IA only covers the impacts of the legislation under consideration. It does not cover any further operational changes which may be made by HMCTS or the judiciary as part of ongoing efforts to make the courts more efficient and effective.

Problem under consideration

6. Currently, there are three separate tiers of court dealing with family matters. This structure is complicated and inflexible. It is difficult for court users to navigate, and does not allow for flexible, efficient deployment of judicial and HM Courts and Tribunals Service (HMCTS) resources. The need to transfer cases between the three tiers of court can cause delay. Further, some family matters are currently not covered by the single set of family court rules, adding to complexity and causing confusion for court users.
7. The primary legislation which created the new family court (the Crime and Courts Act 2013) cannot be implemented without further secondary legislation. There is, therefore, a need for this secondary legislation in order to bring the new court into practice.

Policy objectives

8. The principle objective of the overall package of policy measures (including, but not limited to the measures to which this Impact Assessment relates) is to create a simpler, more efficient court for the hearing of family law cases.
9. This court should be flexible, should allow for efficient use of judicial and court resources, and should be easier for users to navigate. It should reduce delay and, where possible, enable increased judicial continuity in dealing with cases. It should be able to deal with all relevant family matters, and in practice should be the only court able to deal with the majority of family

[1] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/98440/family-court.pdf

matters. As part of improvements to efficiency, there should be a reduced requirement to transfer cases between courts and appeals should be heard at the most appropriate level.

10. The current objective is to bring forward four pieces of secondary legislation which will address elements of the overall policy objectives.

Background

The Family Justice Review

11. The Family Justice Review (FJR) was commissioned in 2010 and invited to undertake a comprehensive review of the system of family justice in light of increasing pressures on the system and growing concerns that the system was not delivering effectively for children and families.

12. The FJR published its Final Report in November 2011 and the Government published its formal response to the Review, setting out its programme of reform for family justice. It accepted several recommendations of the FJR regarding the way family law cases are processed in the court, including the establishment of a single family court to replace the current structure.

13. A more detailed account of the Family Justice Review forms part of IA number MoJ140[2].

Family law

14. Family law includes, among other things, matrimonial and civil partnership matters, financial disputes arising out of marriage and civil partnership breakdown, proceedings relating to children, both private law (for example, arrangements for residence and contact following breakdown of family relationships) and public law (where the state intervenes in family life for the protection of children), proceedings for the adoption of children, declarations of parentage or legitimacy, and proceedings for the enforcement of the court's orders.

The current family court system

15. Family proceedings are currently heard by the High Court, the county courts and the magistrates' courts. Magistrates' courts sitting for the purpose of hearing family proceedings are known as family proceedings courts.

16. Different matters of family law are dealt with by these three different tiers of court, and not all courts can hear all matters or make all types of court order. This means that proceedings must either begin in the correct court for the type and complexity of the matter, or be transferred there from another court.

17. A more detailed account of the current family court system forms part of IA number MoJ140[3].

18. The Family Justice Review highlighted that users found negotiating the current system complex, and recommended that a single point of entry, able to deal with all types of applications and cases, be created. Alongside this single point of entry, the High Court would retain exclusive jurisdiction in a limited number of areas.

19. The current system does not allow for flexible use of judicial and HMCTS resources, since certain types of judge are only permitted to sit in certain courts and to hear certain cases. Should a case require the attention of a different type of judge, it must often be transferred to another court, which creates delay. Further, since cases often may not begin in the most appropriate court, time is wasted and delay created before it is heard by the most appropriate judge.

[2] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/98440/family-court.pdf

[3] *Ibid.*

The new family court

20. The Crime and Courts Act 2013 is the new law that provides for the creation of the new family court. Further pieces of secondary legislation are required to implement the new family court, and to enable it to operate effectively: this IA covers some of this secondary legislation. Paragraphs one to four, above, provide more details on the legislative package.

21. Magistrates, District Judges, Circuit Judges and High Court Judges will all be able to sit in the Family Court to deal with family cases. In time, other judges, such as tribunal judges and assistants to the Judge Advocate General may also be deployed to sit in the family court as a result of flexible deployment measures of the Crime and Courts Act 2013.

The policy options under consideration

22. The first policy option (1a) includes making a 'Consequential Amendments Order' which makes changes to primary legislation which are needed as a consequence of the new family court. These changes do not alter the substance of the primary legislation, but they are necessary to ensure that all existing law will continue to operate as intended when the new family court commences. The first policy option also includes changes to the set of court rules covering family proceedings (the 'Family Procedure Rules 2010' (FPR)). These changes are designed to ensure that, as far as possible, a single straightforward procedure operates for family matters, no matter what level of judge is hearing the case or where it is heard.

23. The second measure (1b) sets out what functions justices' clerks and their assistants will be able to carry out in the new family court. Justices' clerks and their assistants (hereafter referred to together as 'justices' clerks') are staff working in the family court. Currently justices' clerks can carry out certain functions, or duties, in magistrates' courts. These functions are usually of a procedural nature. They cannot work on a case in a county court. In the new family court, justices' clerks will be able to do certain work no matter what level of judge a case is allocated to. They will also be able to carry out certain functions in undefended divorce cases, which are currently dealt with by District Judges in the county courts.

24. The third measure (1c) largely replicates the current position of routing certain appeals against the decisions of judges hearing family cases away from the Court of Appeal, save that the decisions being appealed will now be made by judges sitting in the family court. Although this measure keeps certain appeals within the family court, another piece of law, which will be covered in a later IA, will determine which judges will hear those appeals.

Economic rationale

25. The conventional economic approach to government intervention to resolve a problem is based on efficiency or equity (fairness) arguments. Intervention in this case is justified on efficiency grounds. The proposed measures aim to deliver more efficient use of judicial resources in the family court by removing current barriers to workflow, which should improve HMCTS resource utilisation. There would also be efficiency benefits associated with reducing information costs as applicants will face one set of rules for the Family Court and can find all relevant information in one place. The proposal may also deliver efficiency savings in the HMCTS Business Centres. We do not expect the proposed measures to impact fairness.

Affected stakeholder groups, organisations and sectors

26. The following individuals/sectors are likely to be affected by proposed measures:

    HMCTS: would be affected as the proposals seek to amend HMCTS processes (for example, authorisation of certain functions to justices' clerks or changes to the way certain financial proceedings are handled).

    Judiciary and Magistracy: would be affected as the proposals may result in changes to the allocation of work and working habits.

    Legal Aid Agency: the proposals may involve some transitional costs to the Legal Aid Agency.

Court users: individuals may be affected by some procedural changes, such as the change in the way some financial proceedings are handled. In addition, there may be some minor impacts from consequential amendments. Court users include individuals, children, Local Authorities, and Cafcass. Legal professionals may also be affected by procedural changes and the introduction of new legislation. These impacts are secondary. It is expected that legal service providers would pass on any change in costs to clients. Charities and other third parties who support individuals when going to court and assist in other legal matters may also be affected.

2. Costs and benefits

General Assumptions

27. We have assumed that case outcomes remain the same where cases are heard by different levels of judge or where box work is performed by justices' clerks and their assistants instead of by judges. This includes outcomes of appeals.

28. We have assumed that court case durations will remain the same where work is conducted by a less senior judge or by justices' clerks.

29. We have assumed that the volume of applications as well as the proportion of cases heard by magistrates and by District Judges remain unchanged.

30. Currently, HMCTS court fees under-recover HMCTS court costs in family proceedings. It is assumed that court fees per case will not change as a result of these proposals. We expect that a reduction in court costs per case will result in improved court cost recovery. Where judicial resources are freed up by the proposals, we expect these will be redeployed to other productive judicial activity, e.g. hearing or progressing other cases.

31. We have assumed that legal aid costs per case remain the same. Although the legal aid payment scheme will have to be revised as a consequence of the creation of the new family court, we expect the new scheme to mirror the current scheme in that it will remunerate legal representation according to the seniority of the judge who hears the case (where it was previously linked to level of court before which the case appeared).

32. We have assumed that the legal services required to resolve each case remain the same.

Overall ICT changes and judicial training

33. The implementation of the new family court will require changes to the HMCTS ICT system costing approximately £0.5m. These costs relate to the entire package of new family court reforms; therefore each of the proposed reforms will only be accountable for a share of these overall costs. As there are a multitude of dependencies and crossovers between the different reforms, it has not been possible to split these overall costs amongst the different reforms. Only some of these reforms are covered by this Impact Assessment.

34. Furthermore, as the implementation of the new family court imposes some changes to judicial processes, there will be judicial training costs for MoJ. Estimates suggest costs of approximately £1m relating to the entire package of family court reforms. As with the changes to the ICT system, each of the proposed reforms will only account for a fraction of the overall costs and it has not been possible to split these overall costs amongst the different reforms. Only some of these reforms are covered by this Impact Assessment.

Base Case/Option 0

Description

35. Under the do-nothing option, no secondary legislation would be brought forward to implement the new family court, meaning, for example, that rules of court would not be changed. The

primary legislation creating the new family court would not be brought into force. The existing system would remain unchanged.

36. Because the do-nothing option is compared against itself its costs and benefits and necessarily zero, as is its Net Present Value (NPV).

Option 1a –

Make consequential changes to existing law so that it will reflect the creation of the new family court; change the rules of court so that there is a single set of court rules for family cases.

Description

37. This option makes changes to primary legislation as a result of the creation of the new family court to make sure that all existing law will continue to operate as intended when the family court comes into force.

38. This option will also make changes to the Family Procedure Rules (FPR), which govern court practice and procedure in family law proceedings. For example, these changes will alter the way certain applications for financial remedy are handled in the new family court, make changes to the way cases are transferred between courts and make changes to the way maintenance orders are registered in the courts for enforcement purposes.

    a. In the new family court, some applications for a financial remedy, and for a variation of an existing financial order, will by default follow the shorter procedure currently used for these proceedings in the magistrates' court. Only if the court concludes that the circumstances of the particular case require it will such proceedings follow the longer procedure currently used by the county court.

    b. The changes to the Family Procedure Rules will allow that maintenance orders made in various other courts (including the lower courts in Scotland and Northern Ireland) can be registered for the purposes of enforcement in the new family court, which will (by virtue of the primary legislation which creates the new family court) have the same powers of enforcement as the High Court.

Assumptions

39. The above general assumption relating to no change in case durations does not apply to these proposals. Instead it has been assumed that the need for fewer transfers of proceedings between courts would lead to reduced court case duration.

40. It has also been assumed that the legal services costs of resolving a case remain the same per case.

Benefits

<u>HMCTS and judiciary</u>

41. There may be some benefits associated with a reduction of transfers within the new family court. Where cases need to be heard by a magistrate or a different level of judge at some point in the proceedings, the court can direct the case correspondingly without a formal application or a court order for transfer being necessary. Therefore, the proposed measure is expected to reduce the amount of administrative work associated with processing applications for transfer in family proceedings carried out by HMCTS staff, the judiciary and the magistracy, and lead to a more efficient reallocation of work. It has not been possible to quantify this benefit.

42. There may also be some benefits associated with the changes being made to the handling of applications for a financial remedy in the new family court. Time and efficiency savings may be accrued by HMCTS and the judiciary where cases currently under the longer procedure will follow the shorter one, and judges therefore need to spend less time hearing financial

proceedings and are able to use the time in other productive ways. It has not been possible to quantify this benefit.

Legal Aid Agency

43. We do not expect an impact on the Legal Aid Agency from the proposed measures as there are no expected impacts on the legal aid payments made per case.

Court users

44. We expect there to be time savings and reduced information costs to applicants as it will generally no longer be necessary when issuing family proceedings to consider which tier of court the application should be issued in. This could lead to improved access to justice for court users as applying to the family court would become simpler.

45. We further expect court users to benefit where the more efficient reallocation of work can be translated into shorter case durations.

46. Court users may benefit if applications for financial remedy take, on average, less time to process than they currently do.

47. Court users may also benefit from a simpler system for registering maintenance orders for the purposes of enforcement. Court users wishing to enforce an order by a method of enforcement currently only available in the High Court will only have to apply to the family court, which is expected to be simpler and quicker.

48. Where court users make use of legal services providers it has been assumed that the same amount of legal resource would be required to resolve the case.

Costs

HMCTS and judiciary

Transitional costs

49. Although the new FPR and the consequentially-amended primary legislation will mostly reflect current legislation, there might be some transitional resource implications for HMCTS, as court staff, justices' clerks and their assistants, judges and magistrates will need to familiarise themselves with the amendments to existing law, in particular to the FPR. Overall judicial training costs have been stated at the beginning of the benefits and costs section.

50. In addition, there will be transitional costs to MoJ relating to ICT changes. Overall costs of the new family court ICT changes have been outlined at the beginning of the benefits and costs section.

51. There may be additional transitional costs where printing of the new rules and updating websites is involved. It has not been possible to quantify these costs.

Ongoing costs

52. We do not expect any ongoing costs to HMCTS from the changes to transfers as provided in the proposed measure. The vast majority of family proceedings will be heard in the new family court, which reduces the need for transfers to occur between courts, except an anticipated small number of transfers to the High Court. (Transfers to the High Court should only be necessary where there is a need to make an order that only the High Court can make.)

However, cases may still move between levels of judges within the new family court, but this should take place more quickly than currently.

53. We do not expect an ongoing impact on HMCTS and the judiciary and magistracy from the Consequential Amendments Order as most of the amendments merely concern changing the references to the names of courts.

54. We do not anticipate any additional costs to HMCTS overall where maintenance orders are registered in the new family court, as we expect that the additional work to the family court would free up equivalent resources in other parts of the court service.

Legal Aid Agency

55. There may be transitional familiarisation cost to the Legal Aid Agency as LAA staff need to get acquainted with the changes in both Family Procedure Rules and the consequential amendments.

56. We do not expect any ongoing costs to the Legal Aid Agency as a result of the proposed measures, e.g. no increased payments to lawyers from the legal aid fund.

Court users

57. We do not expect any direct financial costs to court users as a result of this measure.

Legal services providers and charities

58. There may be some familiarisation and awareness costs for legal services providers and charities.

Risks

59. There is a risk that less legal resource will be required as a result of fewer transfers of proceedings and reduced court durations. If so this might generate savings for those paying for legal services, i.e. court users and the Legal Aid Agency. If less legal resource is required, legal services providers are assumed to allocate any spare resources to other profitable activity.

60. There is a risk that overall case durations might not change substantially as a result of improved efficiency of allocating proceedings to courts.

61. There is a risk that judges freed up from hearing longer financial remedy matters will not be able to spend the time productively on alternative matters. If that were the case, the efficiency savings accrued from this change would be less than they might be if judges were able to spend the time productively.

62. Regarding financial remedy proceedings, there is a risk that despite the shorter procedure being the default, more applications for financial remedy will follow the longer procedure than it currently is the case. This would lead to an increase of average costs to HMCTS per case.

Option 1b –

Enable justices' clerks and their assistants to carry out certain functions of the family court, including certain additional functions to those they are currently authorised to perform, and enable them in most instances to carry out functions regardless of the level of judge to which the case is allocated.

Description

63. There are two key elements to these reforms:

    a. Justices' clerks and their assistants would generally be able to carry out certain specified functions in the new family court in the same way as they do now for cases in

the magistrates' courts. The reforms will also generally enable them to carry out these functions no matter what level of judge a case is allocated to in the new family court.

b. Justices' clerks and their assistants would be able to carry out particular functions in relation to cases of undefended divorce, judicial separation, dissolution and separation orders. These functions are currently undertaken by the judiciary.

64. Costs and benefits resulting from justice's clerks and their assistants carrying out particular functions in undefended divorce cases have already been discussed in the "Family Justice – Evidence of Impact" supporting the Children and Families Bill 2013[4]. However, as the legislative changes proposed in this Impact Assessment are necessary to enable justices' clerks to perform the functions outlined above, the costs and benefits directly relate to the instruments proposed in this Impact Assessment, and are therefore an immediate result of implementing option 2.

Assumptions

65. The general assumptions outlined above apply.

66. We have assumed that justices' clerks and their assistants will take the same time to undertake tasks as do members of the judiciary currently. We assume that these tasks will be undertaken to the same standards and with the same outcomes.

67. The salary of justices' clerks and their assistant depends on their level of seniority and which geographical area they work in. MoJ internal modelling work took these differences into account when estimating the average cost for justices' clerks and their assistants to HMCTS. The best estimate for the time value of one minute of their time is approximately £0.45. For this we assumed that they work 45 weeks per year and 37 hours per week. Additional costs of 30% of the average salary have been added to account for non-salary costs. Within this average calculation we have assumed that the majority of work will fall to assistant justices' clerks rather than justices' clerks.

68. We assume that the majority of undefended divorce, judicial separation dissolution and separation orders are processed by District Judges. The time value of a District Judge has been estimated at around £1.50 per minute. This is based on the average annual salary for a District Judge (£104,600), taking into account any additional payments for those working in London. Assuming 37 hours per week for 45 weeks per year and additional non-salary costs (additional 45%) this gives a cost of about £1.50 per minute.

69. We assume that judicial resource freed up by greater use of justices clerks and their assistants would be allocated to other productive judicial activity.

70. We assume that following the reforms justices' clerks and their assistants will perform the box work relating to decrees nisi in all undefended divorce cases. Based on recent HMCTS data, we assume 120,000 petitions for decree nisi to be filed.

Benefits

<u>HMCTS, the Judiciary and the Magistracy</u>

71. The primary benefit of the proposed measure is to allow justices' clerks and their assistants to perform functions at all levels of the family court, and to extend in some instances the kinds of functions they may perform. This would allow courts to make use of justices' clerks and their assistants for a wider array of tasks and to employ them where needed, and hence allow for more efficient, flexible resource allocation.

Functions in undefended divorce

[4] http://media.education.gov.uk/assets/files/pdf/f/family%20justice%20-%20evidence%20of%20impact1.pdf

72. Where justices' clerks and their assistants perform box work relating to decrees nisi in undefended divorce cases, judicial resource may be freed up for other productive judicial activity. This would generate efficiency savings for HMCTS.

73. Based on the average length of time taken to complete box work for a decree nisi application, and the number of applications per year, we estimate that approximately 6,000 hours of judicial time are dedicated to box work for decrees nisi each year. Current estimates suggest a District Judge's time value to HMCTS of approximately £1.50 per minute compared to around £0.45 for justices' clerks and their assistants. Therefore, if justices' clerks and their assistants were to perform the box work for 100% of decrees nisi, we would expect additional savings of around £0.54m from freeing up District Judges (6,000 hours with a saving of £90 per hour). This is a gross saving relating to District Judge costs and does not include the costs of making greater use of justices' clerks and their assistants.

74. It should be noted that, while justices' clerks and their assistants will be authorised to carry out box work relating to undefended dissolutions, judicial separation and separation orders, the volume of such cases dealt with by the family courts is small: for example, in 2012, there were 226 petitions for judicial separation, and an additional 444 petitions for nullity of marriage. Thus the impact of justices' clerks carrying out this work in place of judges is expected to be negligible.

Practice and procedural work

75. Where justices' clerks and their assistants take over some of the procedural work which judges in family proceedings in the County Court currently perform, judges in the family court could be freed up and would be able to redirect their time to alternative tasks. This would lead to efficiency savings to HMCTS. Management information reported 60,000 sitting days (Circuit Judges, District Judges, their deputies, and Recorders) in county courts in 2012. Internal Ministry of Justice modelling work suggests that judges in the county courts spend around 25% of their time on non-hearing work, which includes box work and other non-hearing work. This suggests that judges spend an equivalent of 20,000 sitting days on other functions outside of the court room. However, anecdotal evidence indicates that the majority of this time is spent on case preparation. The amount of time spent solely on procedural work is uncertain and therefore it has not been possible to quantify the benefits from this measure.

Legal Aid Agency

76. We do not anticipate any transitional or ongoing impact on the Legal Aid Agency as the substantive process of dealing with legally aided cases will not change because of the proposed measure.

Court users

77. We do not expect any substantive impacts on court users. This includes no substantive impact on the use of legal services providers.

Costs

HMCTS, the Judiciary and the Magistracy

Transitional costs

78. There may be some initial training costs to familiarise justices' clerks and their assistants with their new functions. These costs are covered by the judicial training costs outlined above.

Functions in undefended divorce proceedings

79. There will be ongoing impacts where justices' clerks and their assistants are expected to perform some functions relating to undefended divorce and judicial separation. This may impact on justices' clerks and their assistants' resources**.** An increase in workload may require HMCTS to divert assistants to justices' clerks from other activities or to employ more assistants to justices' clerks.

80. As stated above, we assume that approximately 6,000 hours of judicial time is spent on box work for decrees nisi. HMCTS data indicates that the cost of justices' clerks and their assistants carrying out this work is around £0.16m (6,000 hours at £27 per hour).

Practice and procedural work

81. Where justices' clerks and their assistants are expected to assist District Judges, Circuit Judges, and High Court Judges in the Family Court, their workload may increase, requiring HMCTS to divert them from other work or to employ more justices' clerks assistants. As stated above, the overall amount of procedural work is uncertain and it has not been possible to quantify the overall costs to HMCTS. However, it is envisaged that justices' clerks and their assistants will generally only take on such additional procedural work as their current capacity permits.

Legal Aid Agency

82. We do not anticipate any transitional or ongoing impacts on the Legal Aid Agency as the substantive process of dealing with legally aided cases will not change because of this proposed measure.

Court Users

83. No costs to court users are anticipated as the substantive process of dealing with cases will not change because of this proposed measure.

Risks

84. There is a risk that efficiency savings from the proposed measure may not be realisable because the work is spread rather thinly. There is a risk that HMCTS will be left with an increased cost in terms of justices' clerks' time with no related benefit in terms of allocating District Judge resource to other productive activities.

85. We have assumed that the majority of the authorised work will be carried out by justices' clerks' assistants, rather than justices' clerks. Currently there are approximately 1,200 legal advisors (assistant justices' clerks: Tiers 1-3) and approximately 100 justices' clerks and their assistants (Tiers 4 and 5). If more functions were performed by justices' clerks instead of being performed by assistant justices' clerks (Tier 1-3), the net benefit of the proposal would be lower because the average £0.45 cost per minute of justices' clerks and their assistants would be higher.

86. We have assumed that the time value of a District Judge is £1.50 per minute. If the time value to HMCTS of a District Judge was higher, the net benefits relating to this proposal would be higher. We have also assumed the average time value to HMCTS of justices' clerks and their assistants to be £0.45 per minute. If this value was higher, the net benefits from the proposed measure would be lower.

87. We have assumed that following the reforms justices' clerks and their assistants perform the box work relating to all decrees nisi. This may not hold, particularly in the short run, whilst justices' clerks become acquainted with their new functions. If the percentage of decrees

processed by justices' clerks and their assistants was lower, the net benefit of the proposed measure would be lower.

88. There is a risk that justices' clerks and their assistants need more time than judges to perform the box work for decrees nisi. If the average time spent on such box work was higher, the net benefit of the proposal would be lower.

89. It is expected that justices' clerks and their assistants will perform largely the same functions in cases allocated to a bench of lay magistrates in the Family Court as they currently do in the family proceedings court. We have assumed no additional costs concerning work on cases allocated to magistrates in the Family Court. However, if allocation changes, and more of the 'less complex' cases are allocated to magistrates, the workload of justices' clerks and their assistants may decrease. However, this may be counteracted if overall more cases are allocated to magistrates than currently is the case.

90. It is possible that the increased flexibility of justices' clerks and their assistants may lead to more effective planning of work. This could benefit court users if better use of resources could be translated into shorter case length.

91. It has been assumed that justices' clerks and their assistants will actually perform the functions that they are able to in the family court. This may depend on the adoption of the policy on a regional level.

92. Justices' clerks and their assistants are obliged to refer a matter back to the court if they determine that it would be inappropriate for them carry out an authorised function in respect of it. There is a risk that, if justices' clerks and their assistants refer a significant number of cases back to the court, the net benefits of this measure would be less than anticipated.

Option 1c –

Bring forward legislation concerning the route of appeals against decisions of judges sitting in the new family court.

Description

93. This option will route appeals against decisions of certain judges in the new family court away from the Court of Appeal and into the new family court.

94. This option will effectively replicate the way appeals are currently handled in the three tiers of court. In the new family court, appeals will lie to the same level of judge as they currently do in the three-tier court system. The legislative measures covered by this option are only needed as a consequence of the new family court being implemented, and do not substantively change the current situation except where specifically set out below.

95. A number of tribunal judges, who are not currently deployed in the family court, will be made judges of the family court by virtue of new legislation. However, it is not anticipated that these judges will actually sit in the family court or hear any family matters in the near future: the legislation is designed to 'future-proof' the new family court, not to allow for any actual change which is currently planned. For this reason, the analysis below does not cover this particular element of the legislative measures which this Option covers. Impact assessment number MoJ139[5] covers in more detail the potential impacts of this element, should it be put into practice in the future.

Assumptions

96. The general assumptions outlined above hold. Specifically, we have assumed that appeal volumes, appeal durations, and appeal outcomes would remain the same. We have assumed no impact on the volume of any further onward appeals, e.g. to the Supreme Court.

[5] http://www.legislation.gov.uk/ukia/2012/250

Benefits

HMCTS, the Judiciary and the Magistracy

97. We do not anticipate any benefits to HMCTS or the judiciary from this measure.

Legal Aid Agency

98. We do not anticipate any benefits to the Legal Aid Agency from this measure.

Court users

99. Court users may benefit from the continuity between the handling of appeals in the old three-tier court system and the new family court. There will be no need for court users, and in particular litigants in person, to familiarise themselves with new arrangements.

Costs

100. We do not anticipate any costs to any of the stakeholders identified in section 1 from this measure.

Net Impact of Options 1a, 1b, and 1c

101. Options 1a, 1b, and 1c form part of a package of measures necessary for the implementation of the new family court. The government has decided to implement all three options, alongside additional measures necessary for the implementation of the new family court that will be set out in a (see paragraphs 1-4 above) The net impact of implementing these options together will equal the sum of the net impacts of each proposal.

102. In summary, the new family court and therefore the three proposals discussed in this Impact Assessment are intended to increase the efficiency of HMCTS, and consequently to reduce delay of family proceedings. It has not been possible to quantify all of the identified impacts for the reasons explained above. However, based on the analysis set out, we expect the proposals to result in a net benefit for all affected parties, as the proposals should result in more efficient HMCTS processes, and a court system that is clearer and simpler for users.

One in Two Out

103. From January 2013, every new regulation that imposes a new financial burden on firms must be offset by reductions in red tape that will save double those costs. One in Two Out (OITO) applies to all domestic regulation affecting businesses and voluntary organisations. We have assessed this change as out of scope for OITO purposes.

104. The legislation does not impose regulation and is not expected to have any direct effects on businesses. There may be secondary impacts on lawyers working in family justice e.g. transition costs from familiarising themselves with changes in the law.

3. Enforcement and Implementation

105. HMCTS and the judiciary will be responsible for implementing and enforcing these proposals, which are planned to take effect in April 2014**.**