

Title: Implementing the new family court (part two) IA No: MoJ 224 Lead department or agency: Ministry of Justice (MoJ) Other departments or agencies: n/a	Impact Assessment (IA)		
	Date: 13 March 2014		
	Stage: Final		
	Source of intervention: Domestic		
	Type of measure: Secondary legislation		
Contact for enquiries: John Hall john.hall@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, Measure qualifies as Two-Out?	
£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, inflexible and difficult for court users to navigate. It does not allow for the most effective and efficient deployment of judicial and HM Courts and Tribunals Service (HMCTS) resources that is appropriate, given the nature and the type of the application. The need to transfer cases between the three tiers of court can cause delay. Primary legislation has already been passed, and some secondary legislation already brought before Parliament, to create the family court. Only the government can pass the secondary legislation needed to make the remaining necessary changes, and to implement in practice certain changes which have already been made by the primary legislation.

What are the policy objectives and the intended effects?
We want a simpler, more efficient court to hear family law cases. The general 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 secondary legislation so that it will reflect the creation of the new family court. Make Rules concerning Family Panels.
Option 1b = Make regulations concerning the powers available to judges dealing with contempt of court in the family court, and make regulations dealing with how warrants are dealt with, or executed, in the family court.
Option 1c = Make rules concerning how business is distributed in the family court, and how the court is to be constituted. Also, change the rules of court so that they are appropriate for the new family 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
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: _____ Simon Hughes _____ Date: 13 March 2014

Summary: Analysis & Evidence

Policy Option 1a

Description: Make changes to existing secondary legislation so that it will reflect the creation of the new family court, and change the rules of court so that these are appropriate for the new family court.

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
<p>Description and scale of key monetised costs by 'main affected groups'</p> <p>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.</p>					
<p>Other key non-monetised costs by 'main affected groups'</p> <p>MoJ would face certain costs associated with judicial training.</p>					
BENEFITS (£m)		Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low					
High					
Best Estimate					not quantified
<p>Description and scale of key monetised benefits by 'main affected groups'</p> <p>It has not been possible to monetise the identified benefits, and the reasons for this are explained in detail in the evidence base.</p>					
<p>Other key non-monetised benefits by 'main affected groups'</p> <p>No direct benefits have been identified. However, the measures contained in this option are necessary for the creation of the single Family Court including more efficient use of court resources and a simpler process for court users.</p>					
Key assumptions/sensitivities/risks					Discount rate (%)
There are no key assumptions, sensitivities or risks associated with this proposal, other than the general assumptions outlined in the evidence base.					N/A

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: Make regulations concerning the powers available to judges dealing with contempt of court in the family court, and make regulations dealing with how warrants are dealt with in the 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'						
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'						
There may be some costs associated with judicial training. There may also be some minor costs to HM Prison Service and court users where the length of sentences regarding contempt of court increases.						
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'						
It has not been possible to monetise the identified benefits, and the reasons for this are explained in detail in the evidence base.						
Other key non-monetised benefits by 'main affected groups'						
There may be some benefits to court users and the Judiciary where the increased level of deterrence provided by a stronger potential sentence for contempt in the face of the court leads to fewer disruptions of proceedings.						
Key assumptions/sensitivities/risks					Discount rate (%)	N/A
There are no key assumptions associated with this proposal, other than the general assumptions outlined in the evidence base. There is a risk that more committal sentences for contempt in the face of court, or longer sentences are imposed than is anticipated.						

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: Make rules concerning how business is distributed in the family court, and how the court is to be constituted. Also make additions to the range of functions which justices' clerks and their assistants may perform in the 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	
<p>Description and scale of key monetised costs by 'main affected groups'</p> <p>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.</p>						
<p>Other key non-monetised costs by 'main affected groups'</p> <p>MoJ would face certain costs associated with judicial training and changes to the family court ICT systems. There may be some additional resource costs to HMCTS due to increased workload to Justices Clerks, District Judges, and administrative staff involved in the initial allocation of cases.</p>						
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)	
Low						
High						
Best Estimate						
<p>Description and scale of key monetised benefits by 'main affected groups'</p> <p>It has not been possible to monetise the identified benefits, and the reasons for this are explained in detail in the evidence base.</p>						
<p>Other key non-monetised benefits by 'main affected groups'</p> <p>There are expected to be some efficiency savings to HMCTS, the Judiciary, and benefits to court users where appeals can be heard more flexibly by more senior judges, and applications for appeals in unmeritorious cases can be avoided. There will also be benefits to HMCTS, the Judiciary, and court users where an initial allocation to more appropriate levels of judge leads to a reduction in delay of family proceedings and allows for a more efficient resource allocation of the Judiciary and HMCTS staff.</p>						
Key assumptions/sensitivities/risks					Discount rate (%)	N/A
<p>We have assumed that outcomes and duration of appeals will not change, and that the initial allocation of cases will reduce the number of transfers in the court system. There is a risk that the initial allocation of cases will not reduce the number of transfers. There is also a risk that the administrative burden with allocation of certain case types is higher than expected and cannot be dealt with by currently existing court staff.</p>						

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 measures contained in eight separate Statutory Instruments (SIs). Implemented together, these measures will help to create a single family court for England and Wales.
2. The 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. The SIs which are not covered by this IA were covered in IA number MoJ224¹.
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 MoJ140². 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 secondary legislation 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 policy option will also cover amendments to the range of functions which justices' clerks and their assistants may perform, which are needed in order to reflect new legislation, and will make Rules concerning Family Panels, which will largely replicate the current situation in this area while reflecting the coming into force of the family court. The second option will set out the powers available to judges dealing with contempt of court in the family court, and will cover some minor matters concerning the enforcement of orders made by the family court. The final option sets out how work will be distributed in the family court, and how the court will be constituted for different types of proceedings. It also makes changes to the existing rules of court to ensure they are appropriate for the new family court: this will involve, among other elements, some changes to the way appeals are handled. Finally, it will introduce freestanding procedural rules for committal cases in family proceedings.
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. A first group of Statutory Instruments have already been laid, and are covered by Impact Assessment No.MoJ224. There remains a need for further secondary legislation in order to bring the new court fully into practice.

¹ <http://www.legislation.gov.uk/ukxi/2013/3204/impacts>

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

Policy objectives

8. The principal 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 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 eight 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 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 MoJ140³.

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 MoJ140⁴.
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

³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/98440/family-court.pdf

⁴ *Ibid.*

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 the most effective and efficient deployment of judicial and HM Courts and Tribunals Service (HMCTS) resources that is appropriate, given the nature and the type of the application, 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.

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 secondary legislation which are needed as a consequence of the new family court. These changes do not alter the substance of the existing 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 option also includes legislation which will amend the functions which justices' clerks and their assistants (hereafter referred to as 'justices' clerks') are able to carry out in the family court. Justices' clerks are staff working in the family court: legislation recently approved by Parliament (and covered by IA MoJ224) authorises justices' clerks to perform functions in the new family court which is largely similar to the role they currently perform in magistrates' courts. The legislation included in this option will amend that instrument consequentially on the passage of the Children and Families Bill, which is due to receive Royal Assent on 13 March 2014, and on the making and laying of a number of instruments that are being made and laid in relation to that Bill or to implement the single family court, such as the Composition and Distribution of Business Rules (discussed below). For example, under this instrument, justices' clerks will be authorised to perform the function of allocating cases within the family court. Finally, the first option includes Rules being made concerning Family Panels. Family Panels of lay justices and District Judges (Magistrates' Courts) make recommendations to the Family/Bench Training and Development Committees about, among other things, the number of new authorised lay justices needed to sit and preside in the family court.
23. The second option (1b) sets out the committal and fining powers available to judges of the family court dealing with contempt of court. It largely replicates the current powers available, save in certain cases which are detailed below. This option also includes some legislation needed to ensure that warrants can be executed in the family court in the same way as they currently can be in the three-tier court system.
24. The third policy option (1c) deals with which cases will be allocated to which levels of judge within the family court, and sets out certain types of proceedings and remedies which can only be dealt with or granted by certain types of judges. As part of this, it sets out which judges the court will be made up of when hearing particular proceedings. It also makes some changes to the way appeals are handled in family matters. This option also covers further changes to the set of court rules covering family proceedings (the 'Family Procedure Rules 2010' (FPR)) –

some changes to these rules have already been made by earlier legislation, and have been covered by IA MoJ224. These changes are designed to ensure that the court rules are appropriate for the structures, processes and efficient functioning of the family court.

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, the use of teams to allocate work to levels of judge).

Judiciary and Magistracy: would be affected as the proposals may result in changes to the allocation of work and working patterns, as well as sentencing powers available to District Judges (Magistrates' Courts) and Circuit Judges when dealing with contempt of court.

HM Prison Service: may be affected by changes to the sentencing powers of some judges. This stakeholder only relates to option 1b and the impact is likely to be negligible.

Legal Aid Agency: the proposals may involve some transitional costs, and some other ongoing costs and benefits with a minimal net impact, for the Legal Aid Agency.

Court users: individuals may be affected by some procedural changes, such as the change in the time allowed for filing an appeal against a case management decision. 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 the volume of applications to the family court will remain unchanged from the current level of applications to the three-tier system of courts.
29. 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.

30. We have assumed that legal aid costs per case remain the same. Although the legal aid payment scheme will 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).
31. We have assumed that the legal services required to resolve each case remain the same.
32. Any assessment of cost and benefit relates to the individual measure in question as these are the subject of this impact assessment, not the implementation of the Single Family Court as a whole.

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.

Legal aid

35. The creation of a single Family Court will have wider implications on the provision of legal aid, and more precisely, the Family Advocacy Scheme (FAS). However, although the changes to the court system imply that there need to be alterations to the legal aid scheme, the particular way the scheme adapts to the new court system is not prescribed by the legislation. Therefore, overall changes to the Family Advocacy Scheme are considered to be wider impacts, rather than direct effects.
36. As the single Family Court will include judges of different levels, the Family Proceedings Court will no longer exist, and the County Courts will no longer have jurisdiction over family proceedings, the current FAS is not applicable any longer, as it remunerates according to level of court rather than level of judge.
37. In order to fit with the new SFC structure, FAS fees have been re-badged so that fees are set according to tier of judge rather than tier of court. As tier of judge is considered a suitable proxy for tier of court there should be no financial impact on either the Legal Aid Fund or Advocates. Details on the revised FAS can be found in the consultation "Supporting the introduction of the single Family Court – Proposed changes to Family legal aid remuneration schemes"⁵.
38. It is possible that there could be some impact on providers due to current regional variation in case allocation. Currently the proportion of public law and private law children cases heard by magistrates, district judges and circuit judges varies widely by region. If the implementation of the gate keeping system leads to a more homogenous split of case load between these levels of judge across England and Wales, areas with an increase in the proportion of public law cases heard by more senior judges may experience an increase in legal aid spend. Conversely, areas that see a decrease in the proportion of legally aided private law cases heard by more

⁵ <https://consult.justice.gov.uk/digital-communications/proposed-changes-family-legal-aid-remuneration>

senior judges are expected to see a reduction in legal aid spend. It has not been possible to quantify these effects, as current practices varies and it is not entirely clear how homogenous the gate keeping decisions will be across England and Wales. We are consulting separately on proposals to change the way that FAS remunerates for advocates' bundles, as the President of the Family Division intends to reduce the size of court bundles in order to align with the revised PLO.

39. In addition, we expect there to be transitional costs to the Legal Aid Agency (LAA) with regards to ICT changes, remodelling FAS, and renegotiating the contracts. Overall, these costs are expected to be one-off costs of approximately £0.02m.

Base Case/Option 0

Description

40. Under the do-nothing option, no further 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. Since some secondary legislation has already been brought forward, the existing system would be partially changed and would be unworkable.
41. Because the do-nothing option is compared against itself, its costs and benefits are necessarily zero, as is its Net Present Value (NPV).

Option 1a –

Make consequential changes to existing secondary legislation so that it will reflect the creation of the new family court. Make Rules concerning Family Panels.

Description

42. This option makes consequential changes to secondary 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. These changes are consequential on the creation of the new family court, and are not expected to have a practical impact.
43. This option will also cover the amendment of certain functions with justices' clerks are authorised to perform in the family court, including the addition of an allocation function. Option 1c (below) covers the creation of teams which will allocate certain types of proceedings to certain levels of judge in the family court; the amendments to the rules governing the role of justices' clerks covered by this measure will allow justices' clerks to play a role in these teams.
44. This option will also cover new Rules being made concerning Family Panels. Family Panels are made up of lay justices and District Judge (Magistrates' Courts) who undertake family law work. They make recommendations to the Family/Bench Training and Development Committees about the number of new authorised lay justices needed to sit and preside in the family court, and liaise with other bodies to share information and represent the views of lay justices sitting in the family court. The new Rules will replicate existing Rules, which relate to Family Proceedings Courts only and which need to be revoked. The new Rules will fit with the family court. This measure is not expected to have any practical impact.

Assumptions

45. The above general assumptions hold in relation to this option.

Benefits

HMCTS and judiciary

46. No benefits are expected to be derived directly from this option. The benefits of the creation of allocation teams, in which justices' clerks will be authorised to perform a role as a result of this measure, are covered by option 1c (below).

Legal Aid Agency

47. It is not expected that there will be any benefits to the Legal Aid Agency as a result of this measure.

Court users

48. It is not expected that there will be any benefits to court users as a direct result of this measure.

Costs

HMCTS and judiciary

49. There may be some transitional resource implications for HMCTS and the judiciary, as court staff, justices' clerks and their assistants, judges and magistrates will need to familiarise themselves with the new legislation.
50. There will be an increased demand on the time of justices' clerks as a result of their role in the allocation teams. These costs will be further discussed under option 1c.

Legal Aid Agency

51. It is not expected that there will be any costs to the Legal Aid Agency as a result of this measure.

Court users

52. It is not expected that there will be any costs to court users as a result of this measure.

Risks

53. No risks have been identified which relate directly to this measure. Risks involved in the creation of allocation teams are covered by option 1c (below).

Option 1b –

Make regulations concerning the committal and fining powers available to judges dealing with contempt of court in the family court, and make provision dealing with how warrants are dealt with, or executed, in the family court.

Description

54. There are two elements to this option:

- a. There will be regulations to restrict the committal and fining powers available to certain levels of judge when dealing with a person for certain types of contempt of court in the family court.
- b. There will be a statutory instrument which will allow Civilian Enforcement Officers to continue to perform the same function in the family court as they currently perform in the magistrates' courts. This is not expected to have any practical impact.

Contempt of court regulations

- 55. Under the current law, the powers available to judges dealing with contempt of court when hearing family matters are determined by several interlinked statutes. The committal and fining powers available are for the most part determined by the court in which a judge is sitting and the type of contempt with which they are dealing.
- 56. In the new family court, the majority of these statutes will not apply and, unless specified in regulations, all judges of the family court will have the powers currently available to the High Court when dealing with a person for contempt. There is, therefore, a need to make regulations setting out the length of time for which certain levels of judge may commit to custody when dealing with contempt of court, and the level of fine which may be imposed.
- 57. These new regulations will largely replicate the powers the levels of judges specified have under the current law; they are required because the existing legislation will not apply to the family court and the High Court powers will otherwise apply.
- 58. This measure will mean the position in the county court will be as follows:
 - a. Lay justices will have committal powers of up to two months for contempt of court for breach of order or undertaking and up to one month for contempt in the face of the court. This maintains the current powers for lay justices sitting in the magistrates' courts.
 - b. Judges of district level (including district judges (Magistrates' Courts)) will have committal powers of up to a maximum of two years to prison when dealing with contempt of court for breach of order or undertaking. This represents an increase in district judge (Magistrates' Courts) powers but is consistent with the current powers available to district judges in the county court. Judges of district level will have committal powers of up to a maximum of one month to prison when dealing with contempt in the face of the court. This maintains the current powers for district judges sitting in the county courts and magistrates' courts.
 - c. Judges of circuit level will have committal powers of up to a maximum of two years to prison when dealing with contempt in the face of the court. This represents an increase in circuit judge powers currently available in the county courts but is consistent with the current powers available to circuit judges sitting in the crown court and High Court.
- 59. This measure will also standardise the fines which may be imposed for contempt of court in the family court. Currently, different judges in different courts may impose fines of varying levels for various types of contempt. In the family court, all judges, except judges of High Court level who will have unlimited fining powers, will be able to impose a fine up to the maximum specified by level five of the standard scale of fines for summary offences (<http://www.legislation.gov.uk/ukpga/1982/48/part/III/crossheading/introduction-of-standard-scale-of-fines>).

Assumptions

Civilian Enforcement Officers

- 60. This instrument will enable Civilian Enforcement Officers to execute warrants of arrest, committal or control issued by magistrates in the family court. Civilian Enforcement Officers are

already able to execute these warrants in family proceedings in the magistrates' courts and this measure will simply transfer these powers to the new family court.

61. The general assumptions outlined above apply.

Benefits

HMCTS, the Judiciary and the Magistracy

62. In respect of the contempt provisions, there may be some benefits from a small increase in fine income as currently fines are limited to £2500 for contempt in the face of the court in the magistrates' and county courts. Level 5 fines are currently set at £5000.
63. It is not expected that there will be any benefits as a result of the Civilian Enforcement Officer measures, as this is intended to replicate the position under the current law.

Legal Aid Agency

64. It is not expected that there will be any benefits to the Legal Aid Agency as a result of these measures.

Court users

65. It is not expected that there will be any direct benefits to court users as a result of these measures.

Costs

HMCTS, the Judiciary and the Magistracy

66. There may be some transitional costs to HMCTS and the judiciary deriving from the need for familiarisation with the new regulations relating to contempt of court sentences.
67. There may also be additional costs to HMCTS and the Prison Service where judges of Circuit Judge level make use of the new High Court powers and the length of sentences imposed for contempt in the face of court increases. While data available on the precise number and length of these sentences currently imposed is limited, Prison Service management information shows 92 committals to custody for contempt of all kinds in county courts in 2012. This total includes civil proceedings, and includes sentences imposed for breach of judgement or order (rather than contempt in the face of the court), and it is expected that the actual number of committals for contempt in the face of the court in family matters will be a small fraction of this overall total. Further, anecdotal evidence from the family judiciary suggests that sentences of significant duration are very rarely imposed; the principal function of the potential sentence is that of a deterrent. We therefore expected that the additional costs to HM Prison Service of the contempt of court measure will be minimal.
68. It is not expected that there will be any additional costs in respect of the Civilian Enforcement Officers instrument.

Legal Aid Agency

69. Legal aid is available to those facing committal for contempt of court in the family court, However, we do not expect the number of contempt of court proceedings to increase as a result of these changes and so do not anticipate any additional costs.

Court Users

70. In respect of the contempt of court measures, court users may be affected where they face longer sentences or higher fines. However, as volumes are very limited, we expect this impact to be small.
71. We do not expect any further costs for court users from the Civilian Enforcement Officers measure.

Risks

72. There is a small risk that more committal sentences for contempt in the face of the court, or longer sentences, are imposed than is anticipated. In this case, the costs to HMCTS and the Prison Service would be greater than expected.

Option 1c –

Make rules concerning how business is distributed in the family court and how the court is to be constituted. Also, change the rules of court so that they are appropriate for the new family court.

Description

73. The legislation covered by this option falls into two distinct areas:
 - a. First, this option will cover how cases and hearings are distributed and allocated in the family court. It will provide structures detailing which types of proceedings and applications should be dealt with by which levels of judges, and which remedies may be granted by which levels of judge. This legislation will also make certain changes to which levels of judges hear which appeals within the family court.
 - b. Second, this option will make amendments to the Family Procedure Rules (FPR), which govern court practice and procedure in family law proceedings.
74. The changes to the current situation being made in the first area may be summarised as follows:
 - a. Previously, a DJ(MC) was able to sit alongside two or three lay magistrates as chairman of a bench in the magistrates' courts. This will no longer be possible and, instead, a bench will be composed only of two or three lay magistrates. It will still be possible for any judge of the family court to observe hearings conducted by magistrates for the purposes of developing experience.
 - b. Appeals against decisions of District Judges of the Principal Registry of the Family Division (hereafter, DJs PRFD) will now lie to Circuit Judges in cases which do not relate to financial remedies. At the moment, such appeals are heard by High Court judges. Appeals against decisions in financial remedies will continue to lie to High Court judges.
 - c. To provide greater flexibility in the family court, a High Court judge will be able to hear an appeal which would otherwise be heard by a judge of circuit judge level where effective and efficient use of local judicial resource demands. Further, a judge of circuit judge *level* (which includes a judge authorised by the President to sit at that level) and not only a circuit judge will be able to hear appeals from district judges and lay justices.
 - d. Where an appeal which would normally be heard by a district judge or circuit judge raises an important point of principle or practice, it can be directed to be heard by a judge of High Court level.
 - e. The legislation covered by this option will set out how applications and business will be distributed in the family court. Certain types of application will be allocated to a

prescribed level of judge (subject to local judicial resource). Emergency applications will be dealt with by the first available suitable judge. The remaining proceedings will be considered and allocated by teams of justices' clerks and district judges (see (d) below) according to criteria. Previously, certain applications had to be made to a specified court or tier of court, while others could be made to any court dealing with family matters.

- f. Provision will also be made for applications to the court to be considered and allocated by teams of justices' clerks and district judges, under the supervision of the Designated Family Judge (DFJ) in the area. These teams will consider applications of certain types and allocate them to the most appropriate level of judge. The criteria used in this allocation will include: the need to make effective and efficient use of local judicial resources; the need to avoid delay; the need for judicial continuity; the location of the parties; and the complexity of the case. Currently, this process takes place in most areas in relation to certain types of application, but not all areas in relation to all applications.

75. The amendments being made in the second area may be summarised as follows:

- a. Permission will be needed to make an appeal against the decision of a District Judge (Magistrates' Courts) (hereafter, DJs MC), where previously no permission was needed.
- b. The time limit for filing a notice of appeal against a case management decision is being changed from a default of 21 days (if nothing different is specified by the court) to a period of seven days. Judges will retain their current ability to either increase or decrease this default limit in particular cases if there is good reason to do so.
- c. Applicants will be guided to request a review of an allocation decision without a hearing, if they are dissatisfied, rather than seeking an appeal. Currently, no such question arises in relation to initial allocation as most cases are not allocated on application to the court.
- d. Rules will be made concerning the giving of written reasons and recording of proceedings in the family court. These Rules will largely replicate current practice in the magistrates' courts, save for the fact that DJs(MC) will no longer provide written reasons. Instead, the intention is that practical arrangements will be made where possible for their judgments to be recorded (and, if necessary, transcribed later).
- e. Consequential amendments are being made to Part 33 of the FPR, which deals with how the family court will enforce its orders and judgments. These amendments are purely consequential on the creation of the family court, and are not expected to have any practical impact.
- f. A new Part 37 will be created in the FPR to deal with committals for contempt of court. However, this Part will simply replicate in the FPR, with minor consequential amendments, current rules which apply to these processes in family matters in the county court. This element of the measure is therefore not expected to have any practical impact.

Assumptions

76. The general assumptions outlined above hold.
77. It is also assumed that appeals will not be disposed of more or less quickly where they are heard by a judge of circuit judge level rather than a High Court judge.
78. It is assumed that allocating cases to the most appropriate level of judge on application to the court will reduce the number of transfers needed between levels of judge.
79. It is also assumed that the introduction of a requirement to seek permission to appeal from a decision of a DJ(MC) will lead to fewer appeals being made without merit or chance of success.

80. We assume that the permission process of appeals against decisions of District Judges (MC) requires less judicial and administrative resources than a full appeal.

Benefits

HMCTS, the Judiciary and the Magistracy

81. It is expected that the new rules which will have the effect of meaning that DJs(MC) will no longer sit as part of a bench with lay magistrates will have no new practical benefits, as anecdotal evidence suggests that this measure only affects a very limited number of cases. Evidence from members of the Family Procedure Rule Committee with experience of the issue of DJs(MC) sitting alongside lay magistrates as part of a bench indicates that DJs(MC) currently exercise this ability very rarely, if at all.
82. It is expected that there will be some time saving to DJs(MC) since they will no longer be required to produce written reasons for their judgements. If this time saved is profitably used to complete other tasks, the measure will result in efficiency gains.

Changes to routes of appeals:

83. In 2012 there were approximately 100 appeals in public law cases. Volumes of appeals in private law cases are not readily available. Overall, we expect this measure to impact on a small volume of cases and the impacts overall to be small.
84. The introduction of a request to appeal process may result in time savings to the judiciary where unmeritorious cases are not permitted to progress (it is anticipated that the time taken to consider a request will be considerably less than the time taken to hear a full appeal). However, this benefit may be eroded if in practice all cases are judged meritorious and consequently proceed to full appeal.
85. Changes to the level of judge who can hear an appeal are expected to lead to time and efficiency savings to HMCTS and the judiciary. Generally, this will allow for a more flexible and appropriate use of judicial resources. As the number of appeals is small, these benefits are expected to be small.
86. Where applicants are dissatisfied with an allocation decision, it is also anticipated that there will be some efficiency savings associated with expressly guiding applicants to request a review of allocation decisions made without a hearing, rather than seeking an appeal, since a review may be conducted at or before the first hearing (in the case of an initial allocation decision), or at the next hearing (in proceedings where an allocation decision without a hearing is made during the proceedings). A full appeal, by contrast, would require an appeal hearing (and, before that, a consideration of an application for permission to appeal where decision is made at district judge level or above).

Initial case allocation:

87. It is expected that this measure will contribute to a more efficient use of judicial resources as the most senior and experienced judges will be able to spend more time hearing the most complex cases, while other levels of judge will be able to dispose of less complex cases efficiently.
88. We anticipate efficiency savings to HMCTS as a result of a reduction in the number of hearings in public law cases, as they will be directly allocated to the most appropriate level of judge from

the outset. We expect this to affect a large proportion of public law cases, as HMCTS management information suggests that in 2012 approximately 35% of public law cases were transferred from a Family Proceedings Court to a County Court within the first seven days after receipt of application. However, as various issues will still need to be dealt with at the first case management hearing (including confirmation of allocation), we expect the overall time savings to be less than one hearing per case.

89. In turn, where less complex private law cases are allocated to the appropriate level of judge, we expect efficiency savings where more senior and experienced judges are freed up to deal with more complex cases and dispose of these more efficiently and quickly. It is currently unclear what effect the allocation mechanism will have on the split of private law workload between different levels of judge.
90. In addition, there may be some benefits where private law cases are currently transferred within the initial phase of the proceedings, as these transfers may be avoided by an initial case allocation to the most appropriate level of judge. HMCTS management information indicates that in 2012 approximately 10% of private law children cases were transferred within the court system within the first seven days of receipt of the application. Therefore, we expect the impact to be small.
91. In addition, certain other categories of application will be allocated to prescribed levels of judge by court staff, and the schedule of which proceedings will be allocated to which levels of judge is being altered slightly from its current state. This is being done in consultation with the judiciary and is intended to ensure that each level of the judiciary is able to deal with the proceedings which are most appropriate to their experience and level of qualification. It is therefore expected that there will be some efficiency gains to HMCTS and the judiciary, since a more effective and efficient use of the local judicial resource and the resource of the High Court bench will be made, such as is appropriate, given the nature and type of application.

Legal Aid Agency

Changes to routes of appeals:

92. There may be some overall savings to the Legal Aid agency if fewer legally-aided cases reach a full appeal hearing.
93. There may be some benefit to the Legal Aid Agency where appeals against decisions from DJs (PRFD) in non-financial legally aided cases are heard by Circuit Judges rather than High Court judges. However, as the volume of cases heard by DJs (PRFD) is very small, we expect these savings to be marginal.

Initial case allocation:

94. It is anticipated that there may be some savings to the Legal Aid Agency as a result of a reduction in the number of unproductive first hearings in legally aided cases. While some work that is carried out in these hearings will still have to be completed by legal aid suppliers, and paid for by the Legal Aid Agency, it is anticipated that having fewer, but more productive, hearings across the duration of a case will result in fewer instances of the Legal Aid Agency having to pay hearing fees for hearings in which little productive progress is made.
95. For wider impacts, see paragraph 35 .

Court users

Changes to routes of appeals:

96. Where unmeritorious appeals are brought to an end more quickly, and where notice of appeal is filed more quickly, it is expected that court users will benefit from a quicker resolution of cases than might have been the case if unmeritorious appeals were pursued to their full extent, or if notices of appeal were filed more slowly.
97. It is expected that there will be some benefits to court users as a result of measures taken to increase the flexibility and range of judges who can hear particular appeals. This should mean that appeals can be listed and disposed of more quickly, reducing overall case durations.
98. It is also expected that there may be some general benefits to court users as a result of the measure allowing appeals raising points of practice and principle to be redirected to a High Court judge. The ability for a judge of High Court level to hear an appeal raising an important point of principle and practice which would otherwise have been heard at circuit judge level may avoid any second appeal as parties may consider that the matter has already been heard at the most senior level in the family court. A quicker disposal of appeal proceedings relating to the case may be expected.

Initial case allocation:

99. Where public law cases are currently transferred due to their complexity at an early stage in the case progression, the allocation of cases to the most appropriate level of judge prior to the first hearing may result in court users, in particular children and parents, having to attend fewer unproductive hearings. Applicants should therefore benefit from a quicker resolution of cases.
100. There may be some ongoing direct financial benefits to legally represented court users where an allocation to another level of judge is avoided by a more appropriate initial allocation, and court users therefore face reduced legal bills as a result of there being fewer unproductive hearings. However, only approximately 10% of cases were transferred within the court system within the first 7 days of receipt of the application in 2012. We therefore expect these benefits to be small. In July to September 2013 at least one party had legal representation in 75% of cases. A small proportion may be legally aided (where there is evidence of domestic violence or child abuse) and where this is the case the benefit will accrue to the Legal Aid Agency.
101. In addition, there may be some ongoing direct financial benefits to court users where the initial allocation reduces the number of hearings needed to resolve the case, resulting in fewer hearings fees. Where court users are legally aided, or eligible for fee remission, these benefits will fall to the Legal Aid Agency and HMCTS, respectively.

Costs

HMCTS, the Judiciary and the Magistracy

102. There may be some transitional resource implications for HMCTS and the judiciary, as court staff, justices' clerks and their assistants, judges and magistrates will need to familiarise themselves with the new arrangements for the allocation and distribution of business in the family court and 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.
103. In addition, there will be transitional costs to MoJ relating to ICT changes. These form part of the overall costs of the new family court ICT changes outlined at paragraph 33. 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.

104. Since it is not expected that the legislative change will have substantive practical impacts, no costs are anticipated as a result of the changes to rules on the composition of the court which will prevent DJs(MC) from sitting alongside lay magistrates as part of a bench.

Changes to routes of appeals:

105. There will be an increased demand on the time of judges required to consider applications for permission to appeal against the decisions of DJs MC. As described above, we expect these costs to be offset by a reduction in the number of full appeal hearings.
106. No costs are expected as a result of expressly guiding applicants to request a review of an allocation decision, rather than a full appeal, and we do not expect any ongoing costs to HMCTS or the judiciary from any other proposed measures covered by this option.

Initial case allocation:

107. There will be an increased demand on the time of justices' clerks and District Judges who form the allocation teams. We expect that in the many DFJ areas which are currently operating these teams, the increased costs will be marginal. In other areas, where allocation teams are not yet fully operational, the impacts will be greater. Since practice currently varies, and since the volume of work required to gate-keep applications is not yet fully quantified, it has not been possible to quantify these costs.
108. Where individuals are dissatisfied with case allocation decisions they have the opportunity to request a review of the decision (as now). The increased flexibility that HMCTS and the judiciary will have around allocation has the potential to increase the number of reviews requested which would mean additional resource implications for HMCTS.

Legal Aid Agency

109. 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.
110. Where permission to appeals against the decision of a DJ MC is requested in a legally-aided case, there may be some small increased costs to the Legal Aid Agency (as legal aid suppliers will be involved in drafting the application, and since there is a fee associated with the application).
111. The Legal Aid Agency currently remunerates legal aid providers for hearings on the basis of the tier of court in which proceedings take place in. On implementation of the new Family Court, however, remuneration in family legal aid cases will be made on the basis of the level of judge before whom proceedings are heard. It is not anticipated that there will be any significant change in the current practice, i.e. the level of judge hearing a case is unlikely to differ from the level of judge hearing a case in the new Family Court. As a result, any savings and costs to the Legal Aid Agency are expected to be minimal

Court users

112. It is expected that there may be some costs to court users as a result of DJs(MC) no longer providing written reasons for their decisions. Should court users require a record of these decisions (for example, for the purposes of preparing skeleton arguments for an appeal), they will have to request a transcript of the recording and both pay a fee and wait for the transcript to be provided. There is, however, provision for the court to order that transcripts be provided at public expense where a party is not able to afford this cost.

113. Legal professionals may be affected where the proportion of public law and legally aided private law children cases heard by the different levels of judge changes, as this will affect FAS payments and therefore the fee income of legal practitioners. Although we expect there to be no overall net-impact, legal practitioners may be differently affected depending on the region in which they work. For reasons outlined above, it has not been possible to distinguish between the different impacts. See consultation “Supporting the introduction of the single Family Court – Proposed changes to Family legal aid remuneration schemes”⁶ for further detail.
114. Other than this, it is not expected that there will be any costs to court users as a result of this measure.

Risks

115. There is a risk that if a significant number of cases are granted permission to appeal against a decision by a DJ(MC) then this will increase the overall resources necessary to deal with these cases. In this scenario, the introduction of an additional step to the appeals process may result in additional costs to HMCTS.
116. There is a risk that High Court judges freed up from hearing appeals against decisions of DJs PRFD will not be able to spend the time productively on other work. 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. If the increased costs of Circuit Judges hearing these appeals are not offset by any savings from High Court Judges, the net impact of the measure may actually be a cost.
117. There is a risk that in order to avoid delays, due to the increased flexibility more appeals are heard by a more senior judge than necessary. In legally represented cases, this may increase the financial burden to court users and, in legally aided cases, to the Legal Aid Agency. However, legal service providers may see a financial benefit.
118. There is a risk that the efficiency savings expected from the introduction of new allocation arrangements, in the form of fewer unproductive hearings and more effective use of judicial resources, may not be fully realised despite the costs associated still being accrued. If allocation teams are established and spend time on the business of allocating cases to the most appropriate level of judge, without there being any corresponding decrease in the number of unproductive hearings and/or transfers between levels of judge, the net impact of this measure may be a cost, rather than a benefit. Equally, if judges were unable to productively use the time saved from a reduction in the number of unproductive hearings, the benefits of the measure would be reduced or eliminated. Further, there is a risk that local judicial and court resources will not permit cases to be allocated to the level of judge which is most appropriate, in which case the full potential benefits of the measure could not be realised.
119. There is a risk that the administrative workload required for allocating certain cases is higher than anticipated and cannot be dealt with using currently existing resources. If this were the case, cost to HMCTS would increase.
120. There is a risk that more requests for written transcripts from DJs (MC) will be requested, which may erode the overall benefit if volumes are sufficiently high.

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

121. 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

⁶ <https://consult.justice.gov.uk/digital-communications/proposed-changes-family-legal-aid-remuneration>

additional measures necessary for the implementation of the new family court that have been set out in an earlier Impact Assessment (see paragraphs 1-4 above). The net impact of implementing these options together will equal the sum of the net impacts of each proposal.

122. 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 the complexity and delay of family proceedings for court users. 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

123. 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.

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. Legal professionals may also be indirectly affected by the required changes to the Family Advocacy Scheme as outlined in paragraph 35.

3. Enforcement and Implementation

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