

Title: Courts and Tribunals (Judiciary and Functions of Staff) Bill: Authorised Court and Tribunal Staff: legal advice and judicial functions IA No: MoJ1008/2018 RPC Reference No: N/A Lead department or agency: Ministry of Justice (MoJ) Other departments or agencies: HM Courts and Tribunals Service (HMCTS)	Impact Assessment (IA)			
	Date: 22/05/2018			
	Stage: Legislative			
	Source of intervention: Domestic			
	Type of measure: Primary legislation			
Contact for enquiries: general.enquiries@justice.gsi.gov.uk				
Summary: Intervention and Options				
RPC Opinion: N/A				

Cost of Preferred (or more likely) Option

Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2016/17)	One-In, Three-Out	Business Impact Target Status
£37.3m	Nil	Nil	Not in scope	Not in scope

What is the problem under consideration? Why is Government intervention necessary?
 HMCTS staff can already be authorised to exercise certain functions of a court, tribunal or judge in most jurisdictions, although the Crown Court remains a notable exception. Greater use of such staff across all courts and tribunals is an important element of the Government's reforms to the justice system, and can only be fully realised with appropriate safeguards for staff and the right cross-jurisdictional leadership structure in place. Legislation is required to introduce the same legal underpinning and framework for authorisation and accountability of staff across all jurisdictions, and to reform the role of justices' clerk. This will ensure that all authorised staff across the courts and tribunal system come under the leadership of HMCTS' most senior lawyers, who will be accountable to judges.

What are the policy objectives and the intended effects?
 The objectives are to use HMCTS staff to progress cases more quickly and free up judges' time so they can focus on more complex and deliberative matters. Some straightforward case management and progression tasks in the courts and tribunals will be undertaken by appropriately qualified staff who have been 'authorised' to exercise certain judicial functions. The independent Procedure Rule Committees will determine which functions may be undertaken by such staff in each jurisdiction, and what qualifications or experience they will need. Authorised staff will be accountable to the Lord Chief Justice (for courts) or Senior President of Tribunals (for tribunals) when exercising judicial functions and will work under judicial supervision. Statutory independence, and protections that currently apply to justices' clerks and their assistants, will apply to authorised staff when exercising judicial functions.

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

- Option 0: Do nothing. Deliver limited role for authorised staff through existing rules.
- Option 1: Reform justices' clerk role; legislate to create a new power to extend the role of authorised staff into the Crown Court only and extend the safeguards that apply to justices' clerks to the Crown Court.
- Option 2: Reform justices' clerk role; legislate to create a new power applicable to all court jurisdictions for which the Lord Chancellor has responsibility; and provide safeguards across both courts and tribunals to facilitate greater use of authorised staff in all jurisdictions.

Option 2 is the preferred option.

Will the policy be reviewed? There is no plan to review the policy.

Does implementation go beyond minimum EU requirements?		N/A		
Are any of these organisations in scope?	Micro Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded: N/A		Non-traded: N/A

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

Signed by the responsible Minister:

Lucy Frazer

Date:

23/05/18

Summary: Analysis & Evidence - Option 1 (and subsequent reform)

Description: Reform justices' clerk role; legislate to create a new power to extend the role of authorised staff into the Crown Court only and extend the safeguards that apply to justices' clerks to the Crown Court.

FULL ECONOMIC ASSESSMENT (of primary legislation and subsequent reform)

Price Base Year 16/17	PV Base Year 18/19	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 4.1	High: 10.4	Best Estimate: 8.3

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	0.5 (steady state)	3.0
High	0	1.3 (steady state)	7.5
Best Estimate	0	1.0 (steady state)	6.0

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

HMCTS would acquire costs of around £1.0m per annum from the introduction of authorised staff into the Crown Court and from providing safeguards. These would be the costs of salaries for authorised staff.

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

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

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	1.2 (steady state)	7.1
High	0	3.0 (steady state)	17.8
Best Estimate	0	2.4 (steady state)	14.3

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

HMCTS would gain benefits of around £2.4m per annum from the introduction of authorised staff into the Crown Court and providing safeguards. These benefits will come from authorised staff undertaking some tasks previously completed by the judiciary, such as case progression work and case management decisions.

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

Users of the Crown Court may experience a more efficient service from the introduction of authorised staff into this court, through swifter resolution of case management decisions outside formal hearings. Reforming the justices' clerk role, and having identical provision for authorised staff in both the Crown Court and magistrates' courts, would help implement more effective case allocation and legal leadership of the interface between these courts. Users of the criminal courts may therefore also see improved continuity in case management and more efficient case progression across the criminal court boundaries.

Key assumptions/sensitivities/risks	Discount
	3.5
<ul style="list-style-type: none"> Changes to the role of justices' clerks and associated benefits would be achieved through primary legislation. All other costs and benefits presented in this assessment are those of anticipated subsequent reforms, which would be delivered via secondary legislation (procedure rules), enabled by the powers in primary legislation. A 15% optimism bias has been applied to mitigate the risk of overstating benefits and understating costs. Calculations of costs and benefits have been discounted across the 10-year appraisal period at a rate of 3.5%. Discounting is a technique used to compare costs and benefits occurring over different periods of time on a consistent basis, and the 3.5% rate is used across Government¹ when appraising periods of 30 years or less. There is a risk that volumes may change, which would affect the magnitude of any costs and benefits. Analysis is based on our understanding of what the future changes would be. Best estimates of the types of tasks that would be completed by authorised staff, and what proportion of the task they would carry out, have been informed by current practice and subject matter experts. The legislation would have been passed and be ready to action in 2020/21. For modelling purposes, we have assumed a staged implementation in the Crown Court. 	

BUSINESS ASSESSMENT (Option 1)

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

¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/685903/The_Green_Book.pdf

Summary: Analysis & Evidence - Option 2 (and subsequent reform)

Description: Reform justices' clerk role; legislate to create a new power applicable to all court jurisdictions for which the Lord Chancellor has responsibility; and provide safeguards to facilitate greater use of authorised staff in all court and tribunal jurisdictions.

FULL ECONOMIC ASSESSMENT (of primary legislation and subsequent reform)

Price Base Year 16/17	PV Base Year 18/19	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 18.7	High: 46.7	Best Estimate: 37.3

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

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

HMCTS will acquire costs of around £7.9m per annum from the introduction or widening of the role of authorised staff in the Crown Court, civil jurisdiction, family jurisdiction and tribunals, and providing safeguards. These will be the costs of salaries for authorised staff.

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

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

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

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

HMCTS will gain benefits of around £13.7m per annum from the introduction or widening of the role of authorised staff in the Crown Court, civil jurisdiction, family jurisdiction and tribunals, and providing safeguards. These benefits will come from authorised staff undertaking some tasks previously completed by the judiciary, such as case progression work and case management decisions.

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

Users of the courts and tribunals system will experience a more efficient service through swifter resolution of case management decisions outside formal hearings. Reforming the justices' clerk role, and having identical provision for authorised staff in both the Crown Court and magistrates' courts, will help implement more effective case allocation and legal leadership of the interface between these courts. Users of the criminal courts may therefore also see improved continuity in case management and more efficient case progression across the criminal court boundaries.

Key assumptions/sensitivities/risks	Discount rate
	3.5
<ul style="list-style-type: none"> Changes to the role of justices' clerks and associated benefits would be achieved through primary legislation. All other costs and benefits presented in this assessment are those of anticipated subsequent reforms, which would be delivered via secondary legislation (procedure rules), enabled by the powers in primary legislation. A 15% optimism bias has been applied to mitigate the risk of overstating benefits and understating costs. Calculations of costs and benefits have been discounted across the 10-year appraisal period at a rate of 3.5%. Discounting is a technique used to compare costs and benefits occurring over different periods of time on a consistent basis, and the 3.5% rate is used across Government² when appraising periods of 30 years or less. There is a risk that volumes may change, which would affect the magnitude of any costs and benefits. Analysis is based on our understanding of what the future changes would be. Best estimates of the types of tasks that would be completed by authorised staff, and what proportion of the task they would carry out, have been informed by current practice and subject matter experts. The legislation would have been passed and be ready to action in 2020/21. For modelling purposes, we have assumed a staged implementation in the Crown Court and full implementation in all other jurisdictions. 	

BUSINESS ASSESSMENT (Option 2)

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

² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/685903/The_Green_Book.pdf

Evidence Base

A. Background

1. The Government is investing £1 billion to transform the courts and tribunals system. We will deliver a service that is just, proportionate, accessible to all and works better for everyone, from judges and legal professionals, to witnesses, litigants, and victims of crime. The measures in the Courts and Tribunals (Judiciary and Functions of Staff) Bill contribute to the wider indirect savings through streamlining processes and effective deployment and utilisation of HMCTS staff and estate; as well as support delivery of the wider HMCTS benefits of £200 million per annum at steady state from 2023/24 (nominal prices).
2. HMCTS staff can already be authorised to carry out certain functions of a court, tribunal or judge and do so in most jurisdictions. This is done largely through rules of court or tribunal procedure rules made under primary legislation. Justices' clerks provide legal advice to lay magistrates on matters of law as well as exercising certain functions of a single justice. This is provided for in primary legislation.
3. In the **Crown Court** the responsibilities of staff are restricted to "formal and administrative matters" (Senior Courts Act 1982, s 82) as specified by the Lord Chancellor after consulting the Lord Chief Justice.
4. In the **civil jurisdiction** the power exists (Civil Procedure Act 1997, paragraph 2 of Schedule 1 for the Civil Procedure Rule Committee to assign functions to court staff. A similar power exists in **tribunals** (the First-tier Tribunal and Upper Tribunal – paragraph 3 of Schedule 5 of the Tribunals, Courts and Enforcement Act 2007). However, the Tribunal Procedure Committee has delegated this power, in accordance with the Tribunals, Courts and Enforcement Act 2007, to the Senior President of Tribunals, who exercises the power via Practice Statements.
5. In the **magistrates' courts** and the **family jurisdiction**, the Lord Chancellor, with the concurrence of the Lord Chief Justice, is empowered to identify which functions of a single justice may be exercised by a justices' clerk and which of these functions may be exercised by assistant clerks (Courts Act 2003, s28).
6. There are currently diverse approaches to, and nomenclature for, authorised HMCTS staff in the different jurisdictions, and different sources of powers, accountability, and mechanisms for review. This reflects, in part, different conceptions and the evolution of the role of authorised staff in those jurisdictions. As a result, while relevant primary legislation already exists in every court jurisdiction but the Crown Court, for HMCTS staff to deliver certain functions, the exercise of these powers in some jurisdictions has been limited to date due to the absence of the necessary safeguards, such as statutory independence from the Lord Chancellor when exercising judicial functions. We believe that such safeguards are required in order to realise the full extent of the potential benefits of using authorised staff in the courts and tribunal system.
7. The legislative measures assessed in this Impact Assessment (IA) will facilitate and encourage greater use of suitably authorised and qualified HMCTS staff to facilitate case management and progression and to support judges and judicial officer holders as effectively as possible. These staff will be authorised to exercise certain judicial functions by a judicial officer holder or member of HMCTS staff nominated by the Lord Chief Justice (for courts) or Senior President of Tribunals (for tribunals) for that purpose. The increased use of HMCTS staff to progress and manage cases is supported by the senior judiciary, including but not limited to the report of the Civil Court Structure Review led by Briggs LJ³ and report of the President of the Queen's Bench Division on efficiency in the Criminal Justice System⁴.
8. Some authorised staff would be case lawyers who would be required to make decisions using an understanding of legal issues and reliable legal judgement, underpinned by legal research, which would be expected of a professional lawyer. These functions would be specific to particular

³ <https://www.judiciary.gov.uk/civil-courts-structure-review/civil-courts-structure-review-ccsr-final-report-published/>

⁴ <https://www.judiciary.gov.uk/the-president-of-the-queens-bench-divisions-review-of-efficiency-in-criminal-proceedings/>

jurisdictions requiring staff with legal training and qualifications and/or close supervision by the judiciary. Additionally, some authorised staff would provide legal advice to lay justices in the **magistrates' courts** and the **family jurisdiction**, a role which is currently undertaken by justices' clerks and their assistants.

9. To fully realise the benefits of this measure we will need in place a leadership structure, headed up by some of HMCTS' most senior lawyers, that covers all jurisdictions for which HMCTS is responsible⁵. These lawyers would be authorised staff themselves and would have responsibility for the management of authorised staff giving legal advice and exercising judicial functions in all courts and tribunals. We also believe that the people in this leadership cadre should be accountable to judges.
10. Currently, the most senior lawyers in HMCTS' legal structure are justices' clerks. The role of justices' clerk is a statutory one, created in primary legislation (Courts Act 2003, s.27) and focused on magistrates' business and not subject to any judicial direction. We believe that removing the statutory basis of this role - tied as it is to the magistrates' courts and without accountability to the judiciary - is required in order to implement the most effective leadership structure possible for authorised staff.
11. Since 2014, HMCTS has reduced the numbers of justices' clerks in England and Wales from 25 to seven (one in each HMCTS region), as part of its Reform Programme. The Government consulted on proposals to make changes to the role of justices' clerk in 2016⁶, which described the new leadership structure referred to above and referred to new 'Heads of Legal Operations', each with a strategic, cross-jurisdictional role with a regional remit.
12. HMCTS has already realised most of the monetised benefits of the proposals to change the role of justices' clerk, with final benefits expected to be realised by the end of 2018/19. However, it remains the case that the current statutory framework underpinning the role of the justices' clerk, including independence from any judicial direction, would make it unworkable to introduce a leadership structure under which people in these senior legal roles must report or account to a more senior lawyer or to a judge.
13. The rationale for reforming the role of justices' clerk is twofold – firstly, to enable the implementation of a cross-jurisdictional leadership structure for authorised staff, and secondly, to bring the assistant clerks into the overarching authorised staff structure. Assistant clerks, who provide advice to magistrates and to lay justices in the family court (often referred to as 'legal advisers'), would become part of the authorised staff structure. Provision for this is made in the Bill.

B. Policy Rationale and Objectives

14. The conventional economic rationale for government intervention is based on efficiency or equity arguments. Government intervenes if there is a perceived failure in the way a market operates ("market failures") or to correct existing institutional distortions ("Government failures"). Government also intervenes for equity ("fairness") reasons.
15. The rationale for government intervention in this instance is efficiency, to correct existing institutional arrangements that are leading to inefficiencies within our courts and tribunals system.
16. The Government believes that, where appropriate and under judicial supervision, suitably qualified and authorised staff would be able to deal with some uncontroversial, straightforward matters as effectively as judges. The measures in this Bill are intended to **facilitate and encourage greater use of authorised staff to exercise judicial functions** in the court and tribunals. This will help to progress cases more quickly, and ensure that case management and preparation issues are resolved

⁵ This does not include the employment tribunals and Employment Appeal Tribunal. This is because, unlike other courts and tribunals, the rules in the employment jurisdictions are not currently made by an independent rule committee, which this legislation is reliant upon. However, the Government anticipates the inclusion of measures to enable the flexible use of authorised staff alongside wider employment tribunal reforms in due course.

⁶ A consultation on the creation of a new senior leadership structure for lawyers working within HM Courts & Tribunals Service. Proposals to make changes to the role of the justices' clerk

at an appropriate and proportionate level, freeing up judicial time for more complex and contentious matters.

17. The accompanying proposal is to introduce the same legal underpinning and framework for authorisation, independence and accountability of staff right across the courts and tribunals system. This will have positive operational impacts in allowing a range of approaches to case management activity to be deployed through authorised staff powers. The cross-jurisdictional framework will also enable statutory independence, and protections that currently apply to justices' clerks and their assistants, to apply to all authorised staff when exercising judicial functions. The intention is that these safeguards will facilitate and encourage the use of authorised staff in all jurisdictions.
18. The associated policy objective, to **reform the role of justices' clerks** and create a new cross-jurisdictional, non-statutory role to manage the new authorised staff structure, will allow those in justices' clerks roles at the moment to take on a greater judicial leadership role across all jurisdictions as Heads of Legal Operations.
19. Government intervention is needed to revise the legislative framework, which currently does not support the use of authorised staff in the Crown Court or allow for the greater efficiency of a cross-jurisdictional leadership and management structure.

C. Affected Stakeholder Groups, Organisations and Sectors

20. The following groups would be most affected by the options considered in this IA:

- HMCTS
- Judges and Judicial Office Holders
- Users of the courts and tribunal system

D. Description of Options Considered

21. To meet the policy objectives, the following options have been considered:

- **Option 0: Do nothing.** Deliver limited role for authorised staff through existing rules.
- **Option 1: Reform justices' clerk role; legislate to create a new power to extend the role of authorised staff into the Crown Court only and extend the safeguards that apply to justices' clerks to the Crown Court.**
- **Option 2: Reform justices' clerk role; legislate to create a new power applicable to all jurisdictions; and provide safeguards to facilitate greater use of authorised staff in all jurisdictions.**

22. Option 2 is the Government's preferred option, as it best meets the policy objectives.

Option 0: Do nothing

23. This option would maintain the status quo, in which powers to authorise staff in the courts and tribunals system are set up differently, if at all, and operate with significant variation between jurisdictions.
24. Under this option the **Crown Court** would be able to continue to assign formal or administrative tasks to court staff but nothing more, precluding any improvements to current processes.
25. In **tribunals** and the **civil jurisdiction**, the exercise of powers by authorised staff may be inhibited without the proposed safeguards in place. The judiciary would continue to carry out case management and case preparation functions which would take more of their time away from the most complex and contentious matters before them.

26. In the **magistrates' courts** and **family jurisdiction**, justices' clerks and their assistants would continue to exercise case management and progression functions within an inflexible framework under which the Lord Chancellor has the power to authorise the functions of a single justice that may be carried out by justices' clerks and assistant clerks. The statutory requirements relating to justices' clerks would remain, limiting the reforms necessary to create the coherent, cross-jurisdictional leadership structure for authorised staff that is envisaged.
27. This option would not allow for the introduction of authorised staff into the **Crown Court**. In **tribunals** and the **civil jurisdiction**, the absence of the necessary safeguards for staff would limit the potential role of authorised staff and therefore the full benefits of the powers that already exist in these jurisdictions could not be realised. In **magistrates' courts** and the **family jurisdiction** there would remain a power to assign functions to some staff that does not enable the flexibility envisaged under Option 2.

Option 1: Reform justices' clerk role; legislate to create a new power to extend the role of authorised staff into the Crown Court only and extend the safeguards that apply to justices' clerks to the Crown Court.

28. This option would reform and redefine the role of justices' clerk. Justices' clerks are HMCTS's most senior lawyers. They and their assistants carry out a range of functions in the **magistrates' courts** and **family jurisdiction**, including providing advice to lay justices on matters of law and exercising certain functions of a single justice. The functions of a single justice that a justices' clerk or assistant clerk may carry out include procedural and case progression matters and are identified by the Lord Chancellor, with the concurrence of the Lord Chief Justice, in secondary legislation⁷.
29. This option would reform the role of the justices' clerk and assistant clerk by removing its statutory basis. Under this option, HMCTS would create a new cross-jurisdictional, non-statutory role to manage the new authorised staff structure. This will allow those in justices' clerks roles to take on a greater judicial leadership role across all jurisdictions.
30. Under this option, the provision of legal advice that is currently carried out by justices' clerks and assistant clerks would become part of the authorised staff structure. Some authorised staff would provide legal advice to lay justices in the **magistrates' courts** and the **family jurisdiction** and the qualifications required of staff to do this would be set out, as now, in secondary legislation. The exercise of the functions of a single justice would also become part of the authorised staff structure, and the power would be widened to allow functions assigned to authorised staff to include more than simply those of a single justice. It would be the responsibility of the independent Criminal Procedure Rule Committee and Family Procedure Rule Committee to determine which functions staff may exercise in criminal and family matters respectively, and what qualifications staff would require.
31. This option would extend authorised staff into the **Crown Court** by creating a new power for Criminal Procedure Rules to provide for the exercise of judicial functions by members of court staff. The primary legislation would delegate to the Criminal Procedure Rule Committee the power to determine which functions authorised staff could exercise in the Crown Court, and the qualifications they would need to do so. The Lord Chief Justice would be ultimately responsible for the assignment and direction of authorised staff.
32. Under this option, the safeguards in place for justices' clerks and assistant clerks - including statutory independence and protection from legal proceedings, costs in legal proceedings, and indemnification when exercising judicial functions - would be extended to authorised staff in the Crown Court.
33. Although Option 1 would enable (authorised) staff to carry out more than just administrative duties in the **Crown Court** for the first time, and reduce some of the inflexibility in the **magistrates' courts** and **family jurisdiction**, there would still be a more limited function for staff elsewhere, as the required safeguards would not be available in the **civil jurisdiction** or **tribunals**. This option would therefore only partially realise the benefits of enabling authorised staff to exercise judicial functions.

⁷ Justices' Clerks Rules, 2005

Option 2: Reform justices' clerk role; legislate to create a new power applicable to all jurisdictions; and provide safeguards to facilitate greater use of authorised staff in all jurisdictions.

34. This option will reform the role of justices' clerk in the **magistrates' courts** and **family jurisdiction**, as described under Option 1.
35. This option will create a new power, applicable to **all court jurisdictions for which the Lord Chancellor has responsibility**, for procedure rules to provide for the exercise of relevant judicial functions by members of court and tribunal staff. The primary legislation will delegate to the **jurisdictional procedure rule committees** the power to determine which tasks can be exercised by authorised staff in the jurisdiction(s) within their purview, and what qualifications they will need. The Lord Chief Justice (for courts) will be ultimately responsible for the assignment and direction of these staff.
36. This option will also introduce the same legal underpinning and framework for authorisation, independence and accountability of staff across **all court and tribunal jurisdictions**. The cross-jurisdictional framework will also enable statutory independence, and protections that currently apply to justices' clerks and their assistants, as described under Option 1 to apply to authorised staff when exercising judicial functions. These safeguards will facilitate and encourage the use of authorised staff in all jurisdictions.
37. The Government believes that continuing gradual iterative reform of the justice system by individual jurisdiction will not be sufficient to deliver the level of change needed, either in terms of delivering the system-wide improvements needed by users or the reduced costs needed to ensure the system delivers justice in a proportionate and sustainable way. Option 2 is the preferred option, as it best meets the policy objective of freeing up judges' time to focus on the most complex and contentious matters before them, and its cross-jurisdictional application allows full realisation of the benefits of enabling authorised staff to exercise judicial functions.

E. Cost and Benefit Analysis

38. This IA identifies both monetised and non-monetised impacts on individuals and groups in England and Wales, and also on individual and groups in Scotland in respect of the tribunals analysis. This has the aim of understanding what the overall impact might be from implementing the preferred option. As Option 0 is used as the baseline, its costs and benefits, and therefore its Net Present Value (NPV), are necessarily zero.

Methodology and Scope

39. The power for procedure rules to set out the judicial functions which authorised staff may exercise will be achieved through primary legislation. As such, the costs and benefits presented in this IA are those of anticipated subsequent reforms which would be delivered via secondary legislation. It will be for the jurisdictional rule committees to decide which functions authorised staff should be able to exercise, within the limits set out by legislation, and there is no intention for this analysis to prejudice subsequent decisions made by these committees.
40. These costs and benefits, outlined below, represent the MoJ's best estimates and are based on detailed thinking of what future changes may look like. This thinking has been informed by the best available information, subject matter experts and operational staff. Best estimates of the types of tasks that would be completed by authorised staff, and what proportion of the task they would carry out, have been informed by current practice and subject matter experts. Where assumptions concerning new processes have been made, they are based on existing management information and previous consultation with stakeholders, including the judiciary.
41. Our best estimates are continuously reviewed. However, as many of these estimates are assumptions and are likely to change, both in response to potential future consultations – if undertaken by the rule committees – and as processes and roles for authorised staff are further clarified, this means that the

impacts described in this IA should not be regarded as firm predictions. For more information relating specifically to these assumptions, please refer to section F on the main risks and assumptions and for a sensitivity analysis of the monetised impacts.

42. The number of calculations involved in the derivation of the monetised impacts in this IA has been extensive, due to the transformational nature of the programme to reform our courts system. To detail them all here would be disproportionate. Instead, the analysis is intended to allow those interested in this policy to understand the comparative scale of the monetised costs and benefits involved in relation to the introduction of authorised staff in each jurisdiction.
43. The analysis has been compiled for a number of key jurisdictions, including the magistrates' courts, Crown Court, civil jurisdiction, family jurisdiction and the two largest first-tier tribunals by caseload: the Immigration and Asylum Chamber (IAC) and Social Security and Child Support (SSCS) jurisdiction. Many of the smaller courts and tribunals by volume, such as the High Court and the Mental Health tribunal, are not included but would nevertheless be subject to similar powers.
44. Some jurisdictions are not included in this IA: Probate and the Court of Protection would be subject to similar powers but are not modelled here, as design work is ongoing in these areas.
45. There are no monetised costs or benefits to users of the courts and tribunals (for example legal representatives and professionals, defendants, victims or witnesses of crime) in this IA. However, it has been assumed that the existence and expanded use of authorised staff would yield non-monetised benefits by reducing delays and by ensuring cases are progressed via the most appropriate channel.
46. The costs and benefits of each option, and net benefits, are set out below by relevant jurisdiction.

Baselines and Impact Calculations

47. Unless stated otherwise, the impacts in this IA have been calculated on the following basis:
 - All monetised costs and benefits are in 2016/17 prices and, where necessary, have been re-based using HM Treasury's published GDP deflator series.
 - A 15% Optimism Bias has been applied to all saving and costs, to address the various risks and uncertainties associated with the estimates in this IA.
 - The NPV of the options considered are presented using a 10-year appraisal period from 2018/19.

Option 1: Reform justices' clerk role; legislate to create a new power to extend the role of authorised staff into the Crown Court only and extend the safeguards that apply to justices' clerks to the Crown Court.

Costs and Benefits of Option 1

48. Option 1 would incur additional costs and provide additional benefits in the Crown Court compared with Option 0. The benefits of continuing to deliver a limited role for authorised staff through existing rules in the family jurisdiction, civil jurisdiction and tribunals, as outlined in Option 0, could still be realised. There would be additional costs (associated with the training and recruitment of new authorised staff in the Crown Court) compared with Option 0. These have not been quantified, as they would vary according to the roles and responsibilities of staff.

Magistrates' courts and family jurisdiction

49. This option would reform the role of justices' clerk in the magistrates' courts and family jurisdiction.
50. Removing the jurisdictional boundaries imposed by the statutory role of justices' clerk would bring non-monetised benefits, such as enabling more effective case allocation and case management between the magistrates' courts and Crown Court, improving efficiency and accountability and driving up the performance of the criminal courts. Users of the criminal courts may therefore see improved

continuity in case management and more efficient case progression across the criminal court boundaries. This would also help implement legal leadership of the interface between the magistrates' courts and Crown Court.

Crown Court

51. Authorised staff would undertake some tasks currently completed by judges. For the purposes of this IA, it has been assumed that these would be case management and case progression tasks, although it would be for the Criminal Procedure Rule Committee to set out the precise functions that an authorised member of HMCTS staff may undertake in the Crown Court. For this reason we have used best estimates derived from current practice and input from subject matter experts.
52. The introduction of authorised staff as described above would free up judicial time, equating to around 1,600 sitting days per annum, so allowing judges to focus on the most complex matters before them. This would provide an economic benefit of around £2.4m per annum. As the annual cost of authorised staff in the Crown Court would be around £1.0m, this would provide a net benefit of around £1.4m per annum⁸. This is a best estimate, as it would be for the Criminal Procedure Rule Committee to decide the appropriate use of authorised staff, within the limits set out by legislation.

Sensitivity analysis

53. The Committee could choose to permit fewer tasks to be carried out by authorised staff, or more tasks. If fewer tasks were delegated to authorised staff in the Crown Court, freeing up only 50% of the best estimate of judicial sitting days, there would still be a net benefit of £0.7m per annum. If more tasks were delegated, or tasks outwith the models used here, and (for example) 25% more judicial sitting days were freed up than our best estimate, there would be a net benefit of £1.7m per annum.

Net Impact of Option 1

54. Table 1 shows the net impact of reforming the justices' clerk role, extending authorised staff into the Crown Court, and extending safeguards to authorised staff in the Crown Court under Option 1.

Table 1: net impact of Option 1

	Total Cost	Total Benefit	Net Benefit
Option 1 (compared with Option 0)⁹	£1.0m pa	£2.4m pa	£1.4m pa

55. Option 1 would have a monetised best estimate NPV of £8.3m with a 2018/19 base year, 2020/21 implementation and a 10-year appraisal period.

Option 2: Reform justices' clerk role; legislate to create a new power applicable to all jurisdictions; and provide safeguards to facilitate greater use of authorised staff in all jurisdictions.

Costs and Benefits of Option 2

56. Option 2 will incur additional costs and provide additional benefits in the family jurisdiction, civil jurisdiction and tribunals, compared with Option 0. The non-monetised benefits from the reform of the justices' clerk role in the magistrates' courts and family jurisdiction, as described in Option 1, would still be realised. The benefits of extending authorised staff into the Crown Court and providing safeguards for them, as described in Option 1, would also still be realised.
57. There will be additional costs (associated with the training and recruitment of new authorised staff) compared with Option 0, as Option 2 will allow the full benefits of this measure to be implemented in all jurisdictions.

Magistrates' courts

⁸ Numbers may not sum due to rounding.

⁹ Numbers may not sum due to rounding.

58. The (non-monetised) benefits from reforming the justices' clerk role will be as described in Option 1.

Family jurisdiction

59. Introducing safeguards to extend the roles of authorised staff in the family jurisdiction will mean that authorised staff could undertake some tasks currently completed by judges. For the purposes of this IA, it has been assumed that authorised staff will complete some case management hearings and interlocutory work in some cases, although it will be for the Family Procedure Rule Committee to set out the precise functions that a member of authorised HMCTS staff may undertake in the family jurisdiction. For this reason we have used our best estimates.

60. The introduction of authorised staff will free up some judicial time, equating to around 9,400 sitting days per annum, allowing judges to focus on more complex matters, providing an economic benefit of around £7.5m per annum. As the cost of annual authorised staff in the family jurisdiction will be around £2.9m, this will provide a net benefit of around £4.6m per annum. This is a best estimate, as it will be for the Family Procedure Rule Committee to decide the appropriate use of authorised staff within the limits set out by legislation.

Sensitivity analysis

61. The Committee could choose to permit fewer tasks to be carried out by authorised staff, or more tasks. If fewer tasks were delegated to authorised staff in the family jurisdiction, freeing up only 50% of the best estimate of judicial sitting days, there would still be a net benefit of £2.3m per annum; if more tasks were delegated, or tasks outwith the models used here, and (for example) 25% more judicial sitting days were freed up than our current best estimate, there will be a net benefit of £5.7m per annum.

Crown Court

62. The costs and benefits from extending authorised staff into the Crown Court and providing safeguards for them will be as described in Option 1.

Civil jurisdiction

63. Option 0 would incur some of the costs and provide some of the benefits described here, as some of the changes to authorised staff due to reform in the civil jurisdiction can be delivered under existing rules. As we do not know the proportion of the total costs and benefits that can be delivered under existing rules, we have included the full amounts here. This provides a highest-level best estimate of costs and benefits of Option 2 relative to Option 0 in the civil jurisdiction.

64. Currently, there is a more limited use of authorised staff in the civil jurisdiction. We envisage that the introduction of new safeguards for staff in these roles will encourage greater use of authorised staff, however it will be the responsibility of the Civil Procedure Rule Committee to set out the precise functions that authorised staff may undertake in the civil jurisdiction in future. For this reason we have used our best estimates in modelling the potential costs and benefits. For the purposes of this IA, it has been assumed that authorised staff will conduct simple interlocutory hearings online, on the papers and carry out other interlocutory work. Complex interlocutory hearings will still be completed by a judge, heard virtually or physically. Authorised staff would also undertake a new case progression function, allocating cases to the most appropriate hearing type at the earliest possible stage.

65. If authorised staff were used for the above tasks in money claims (both specified and unspecified), this would free up judicial time equating to around 2,200 sitting days per annum, allowing judges to focus on more complex matters. This would provide an economic benefit of around £1.6m per annum. As the annual cost of authorised staff in the civil jurisdiction would be around £0.7m, this would provide a net benefit of around £0.9m per annum¹⁰. This is a best estimate, as it will be for the Civil Procedure

¹⁰ Numbers may not sum due to rounding.

Rule Committee to decide the appropriate use of authorised staff in the civil jurisdiction, within the limits set out by legislation.

Sensitivity analysis

66. The Committee could choose to permit fewer tasks to be carried out by authorised staff, or more tasks. If fewer tasks were delegated to authorised staff in the civil jurisdiction, freeing up only 50% of the best estimate of judicial sitting days, there would still be a net benefit of £0.5m per annum. If more tasks were delegated, or tasks outwith the models used here, and (for example) 25% more judicial sitting days were freed up than our best estimate, there would be a net benefit of £1.1m per annum.

Tribunals

67. Option 0 would incur some of the costs and provide some of benefits described here, as some of the changes to authorised staff due to reform in tribunals can be delivered through existing rules. As we do not know the proportion of the total costs and benefits that can be delivered under existing rules, we have included the full amounts here. This provides a highest-level best estimate of costs and benefits of Option 2 relative to Option 0 in tribunals. The Immigration and Asylum Chamber (IAC) and the Social Security and Child Support (SSCS) jurisdictions have been modelled in detail and are included in the analysis below.
68. Under Option 2 authorised staff will undertake some tasks currently completed by judges. Under current arrangements it is the responsibility of the Senior President of Tribunals to set out the precise functions that a member of authorised HMCTS staff may undertake in tribunals. For this reason we have used our current best estimates. The figures below assume authorised staff will deal with preliminary issues, interlocutory work and some case management hearings in the IAC and SSCS jurisdiction, and that they will undertake a new case progression function, allocating cases to the most appropriate track at the earliest possible stage.
69. The introduction of authorised staff would free up judicial time, equating to around 3,300 sitting days per annum. However, the introduction of the new case progression function (not currently completed by judges) will create the equivalent of 13,400 sitting days per annum. Combined, these changes would provide an economic benefit of around £2.2m per annum. As the annual cost of authorised staff in the tribunals would be around £3.3m, this would create a net cost of around £1.1m per annum¹¹.
70. We expect that there would, however, be a benefit from the introduction of the new case progression function, as it could reduce delays and ensure cases are progressed via the most appropriate channel. These benefits would be realised through efficiency savings later in the process. However, as we are unable to apportion these efficiency savings to this function, it is not possible to monetise this benefit. This is a best estimate, as it would be for the Senior President of Tribunals to decide the appropriate use of authorised staff in tribunals, within the limits set out by legislation.

Sensitivity analysis

71. The Senior President of Tribunals could choose to permit fewer tasks to be carried out by authorised staff, or more tasks. If fewer tasks were delegated to authorised staff in the tribunals, freeing up only 50% of the best estimate of judicial sitting days, and only 50% of the new function was introduced, then there would be a net cost of £0.6m per annum. If more tasks were delegated, or tasks outwith the models used here, and (for example) 25% more judicial sitting days were freed up than our best estimate, and 25% more equivalent authorised staff sitting days were required, this would create a net cost of £1.4m per annum.

Net Impact of Option 2

72. Table 2 shows the net impact of reforming the justices' clerk role, creating a new power applicable to all jurisdictions; and providing safeguards to facilitate greater use of authorised staff in all jurisdictions under Option 2.

¹¹ Numbers may not sum due to rounding.

Table 2: net impact of Option 2

	Total Cost	Total Benefit	Net Benefit
Option 2 (compared with Option 0)¹²	£7.9m pa	£13.7m pa	£5.8m pa

73. Option 2 will have a monetised best estimate NPV of up to £37.3m with a 2018/19 base year, 2020/21 implementation and a 10-year appraisal period.

Extent

74. The preferred option will only extend to England and Wales insofar as it applies to the criminal, civil and family jurisdictions of the court system. However in tribunals, part 1 of the Tribunals, Courts and Enforcement Act 2007 extends to England and Wales, Scotland and Northern Ireland.

F. Risks and Assumptions

Key Assumptions

75. The costs and benefits in this IA are based on assumptions. Some apply to HMCTS as a whole whereas others are specific to certain jurisdictions. These assumptions are as follows:

- The analysis and figures presented are in 2016/17 prices using 2016/17 baseline volumes. This assumes that caseloads will remain constant.
- The costs of these staff are based on a HMCTS Band B salary, except in the Crown Court where they are based on a Band A salary, and include non-wage costs such as pension and National Insurance contributions.
- Training and recruitment costs may vary by jurisdiction and have not been monetised.
- The legislation will have been enacted by 2020/21. For modelling purposes, we have assumed a staged implementation in the Crown Court and full implementation in all other jurisdictions. Although this is assumed, it will be subject to decisions made by the jurisdictional rule committees.
- Authorised staff will be as efficient as judges. For some tasks in the family jurisdiction, civil jurisdiction and tribunals, it has been assumed that authorised staff will need to escalate to a judge in 10% of cases due to the complexity of the case. In the Crown Court, it has been assumed that, of the tasks that the Criminal Procedure Rule Committee may decide that authorised staff could carry out, staff will be carrying those tasks out 50-75% (ie a proportion) of the time. The remainder of the time, those tasks will continue to be carried out by judges. The extent to which a given task is carried out by a member of authorised court staff rather than a judge would depend on the task.
- Authorised staff will conduct the types of tasks specified in the analysis for each jurisdiction above.

Assumptions relating to the family jurisdiction

- Authorised staff are assumed to work for 5.5 hours per day. A 5.5-hour judicial sitting day is standard for family judicial workload. It was used for authorised staff to ensure consistency with judges. When estimating the FTEs required for authorised staff, the standard administrative working day figure of 7.4 hours was used.
- Authorised staff FTE has been calculated by taking the workload hours and dividing by the number of hours a day administrative staff work.

¹² Numbers may not sum due to rounding.

- The benefits of authorised staff in the family jurisdiction will arise as a result of a reduction in judicial sitting days. While these authorised staff may also complete work currently completed by justices' clerks, this has not been included in the model.

Assumptions relating to the Crown Court

- The average cost of a judicial sitting day is based on the 2016/17 average salary, divided by 185 sitting days.
- The average cost per sitting day of an authorised member of staff is based on a 2016/17 salary figure divided by 179 sitting days.
- We anticipate staged implementation in the Crown Court, as reflected in the assumptions below. 50% of the costs and benefits of authorised staff will be realised in 2020/21, 75% in 2021/22 and 100% from 2022/23 onwards. Although this is assumed, it will be subject to decisions made by the Criminal Procedure Rule Committee.

Assumptions relating to the civil jurisdiction

- Authorised staff have been assumed to work for 5.5 hours per day. A 5.5-hour judicial sitting day is standard for civil judicial workload. It was used for authorised staff to ensure consistency with judges. When estimating the FTEs required for authorised staff, the standard administrative working day figure of 7.4 hours was used.
- Authorised staff FTE has been calculated by taking the workload hours and dividing by the number of hours a day administrative staff work.

Assumptions relating to Tribunals

- A sitting day of 6 hours has been assumed.

Risks

76. The analysis is based on a number of uncertainties. The main risks are as follows:

- There is a risk that case volumes in each jurisdiction may change, which would affect the magnitude of any costs and benefits. However, published statistics show that whilst receipts volumes may fluctuate from year to year (especially in tribunals), as an average over a longer period they have remained reasonably constant. The NPV figures presented use a period of 10 years to mitigate this risk.
- We have assumed that authorised staff would conduct the types of tasks specified in the analysis for each jurisdiction above. Costs or benefits may be higher or lower than the best estimates presented. For this reason we have provided 50% lower and 25% higher illustrative examples to show what costs and benefits could be under these conditions.
- The 10% escalation rates from authorised HMCTS staff to judge in the civil jurisdiction and tribunals is a best estimate. In reality, this could be higher or lower. However, even if this figure were much higher there is still likely to be a positive NPV in the quantified options.
- There is a risk that authorised staff could be less productive than judges, which could reduce the benefits of the reforms.
- There is a risk that greater than anticipated caution is exercised when deciding which judicial tasks authorised staff could be allowed to carry out, which would mean the full costs and benefits described would not be realised.

G. Wider Impacts

One in, Three out and Business Impact Target

77. The proposals are not regulatory and do not meet the definition set out under the Small Business Enterprise and Employment Act 2015. The proposal is not in scope of 'One-in, Three-Out'.

Direct Costs and Benefits to Business

78. There are no direct costs or benefits to business.

Small and Medium Enterprises

79. There are no significant effects on Small and Medium Enterprises.

Equalities Impact Assessment

80. A separate Equalities Impact Assessment has been produced.

Environmental Impact Assessment

81. No environmental impacts have been identified.

Family Impact Test

82. There is no significant impact on families. Users of the family court may benefit from their case being allocated to the most appropriate channel within the family jurisdiction. This would occur under all options, including Option 0.

H. Monitoring and Evaluation

83. Responsibility for the practical application of the assignment of responsibilities to authorised staff will lie with the jurisdictional rule committees. We will work closely with the committees and the senior judiciary to monitor the impact of any future assignment of functions and responsibilities to authorised staff.