Title: Judicial Review & Courts Bill: Overarching Impact Assessment

IA No: MoJ07/2021

RPC Reference No: N/A

Lead department or agency: Ministry of Justice

Other departments or agencies: Department of Business, Energy & Industrial Strategy (BEIS), HM Courts and Tribunals Service (HMCTS), Ministry of Housing, Communities & Local Government (MHCLG)

Impact Assessment (IA)

Date: 02 February 2022

Stage: Final

Source of intervention: Domestic

Type of measure: Primary legislation

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Summary: Intervention and Options

RPC Opinion: Not Applicable

Cost of Preferred (or more likely) Option (in 2021-22 prices)			
Total Net Present Social Value £37.4m	**Business Net Present Value** N/A	**Net cost to business per year** N/A	**Business Impact Target Status** Not a Regulatory Provision

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

The Judicial Review and Courts Bill (JRC Bill) contains a number of measures with impacts across the court and tribunal system. Following an independent review, the Government's has decided to remove Cart Judicial Reviews (JR), which should allow for increased efficiencies in the courts system. The current set of JR remedies are also inflexible, and the JRC Bill will give the courts additional powers with regard to quashing orders. Employment Tribunals (ET) are the only part of the courts and tribunal system where procedure rules are not the responsibility of independent judicial-led committees and the JRC Bill will transfer this responsibility to the Tribunal Procedure Committee (TPC). The JRC Bill will also create an Online Procedure Rule Committee (OPRC) to support online procedures in civil, family and tribunal proceedings and to facilitate the greater use of technology to enable disputes to be resolved more effectively. The JRC Bill will also streamline coroners' inquest procedures to support Covid-19 recovery and reduce unnecessary delays. Finally, the JRC Bill includes procedural and structural changes that will increase the efficiency of the criminal courts system. Primary legislation is required to bring about all of these changes.

What are the policy objectives of the action or intervention and the intended effects?

The primary rationale for the options detailed in this Impact Assessment (IA) is to increase the efficiency and efficacy of the courts. It will ensure that JR avenues are an efficient use of resource and that the remedies available to the courts upon a successful JR are effective. The Bill also aims to streamline procedures or eliminate unnecessary processes in civil, family and tribunals jurisdictions, the criminal courts system and the Coroners' Courts. It will also facilitate better use of new technologies, reduce delays, help recovery from Covid-10 and allow greater flexibility in the deployment of court resources.

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

- Option 0: Do Nothing – maintain the status quo across the courts and tribunals.
- Option 1: Transfer procedure regulation and rule-making powers to the TPC, and more closely align the ET and EAT with the First-tier Tribunal and Upper Tribunal
- Option 2: Establish an OPRC for the civil, family and tribunals jurisdictions.
- Option 3: Legislate for a package of amendments to the Coroners and Justice Act 2009 to streamline corners' inquest procedures.
- Option 4: Legislate for a package of criminal court measures that will create a more efficient and accessible criminal court system.
- Option 5: Remove Cart JRs by making certain decisions of the Upper Tribunal Final.
- Option 6: Introduce new powers to suspend or alter the effect of quashing orders.

The government's preferred option is to legislate for options 1-6 as they best meet the policy objectives.

Will the policy be reviewed? The legislation will be reviewed in line with post-legislative scrutiny procedures.

Is this measure likely to impact on international trade and investment?		No		
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: David Wolfson Date: 03.02.22

Summary: Analysis & Evidence

Policy Option 1

Description: Transfer rule-making powers to the Tribunal Procedure Committee (TPC), and more closely align the ET and EAT with the First-tier Tribunal and Upper Tribunal

FULL ECONOMIC ASSESSMENT

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

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/a	1	£	**N/A**
High	N/a		£	**N/A**
Best Estimate	£0m		£	**N/A**

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

The TPC is likely to incur administration costs as a result of the change as well as for recruiting the additional TPC members. These are estimated at £3.5k per year.

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

There are no non-monetised costs for the main affected groups.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/a	1	N/a	**N/A**
High	N/a		N/a	**N/A**
Best Estimate	£0m		£0m	**N/A**

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

There are no expected monetised benefits.

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

The key benefit is anticipated to be a quicker response to the need to introduce, amend or revise ET procedures. Over time, this option will lead to changes in the rules and procedures for the ET and EAT and but the nature of the changes and their impacts will depend on future decisions of the TPC, which cannot be known at this time.
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Key assumptions/sensitivities/risks	**Discount rate (%)**	N/A

The impacts of this option are not based on any major assumptions and there are no associated risks.

BUSINESS ASSESSMENT (Option 1)

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

Summary: Analysis & Evidence

Policy Option 2

Description: Establish an OPRC for the civil, family and tribunals jurisdictions.

FULL ECONOMIC ASSESSMENT

Price Base Year 2021	PV Base Year 2021	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	**High:**	**Best Estimate:** £70k

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/a		N/a	**Optional**
High	N/a		N/a	**Optional**
Best Estimate	£0m		£10k	**£70k**

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

It is estimated that it will cost the MoJ approximately £10k per year to run the OPRC. The running costs are for travel and subsistence, as well as publications. The £10K figure is based on an extrapolation of the running costs of existing rule committees. Over a 10-year appraisal period, this gives an NPV of £70k.

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

Other costs associated with this option, including the digitisation of services that may be brought under the remit of the OPRC, are already funded through the HMCTS Court Reform Programme, so this option does not create any additional costs. Similarly, the duty on the Lord Chancellor to provide additional digital support is already funded through the Court Reform Programme.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/a		N/a	**N/a**
High	N/a		N/a	**N/a**
Best Estimate	0		0	**0**

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

There are no monetised benefits for the main affected groups.

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

This option will enable the HMCTS court reform programme by facilitating the creation of a simplified rule making process which will deliver simpler and more efficient court processes. As any such benefits would relate to the new rules and processes themselves, they are not the direct impacts of this option and are not captured in this IA.

There could be a greater number of court users using the online rules, depending on which non-money claims and Family and Tribunals cases become in scope. Due to uncertainty, these benefits have not been monetised.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5

The analysis assumes current caseloads are maintained. To the extent that the OPRC allows for court users to resolve disputes without the support of legal services providers, we assumed that solicitors and other approved professionals will be able to substitute the time they currently spend on dealing with these cases with other work of a similar value resulting in no net loss of income.

BUSINESS ASSESSMENT (Option 2)

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

Summary: Analysis & Evidence

Policy Option 3

Description: Legislate for a package of amendments to the Coroners and Justice Act 2009 to streamline corners' inquest procedures.

FULL ECONOMIC ASSESSMENT

Price Base Year 2021	PV Base Year 2021	Time Period Years	Net Benefit (Present Value (PV)) £0		
			Low: Optional	**High:** Optional	**Best Estimate:**

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/a		N/a	**N/a**
High	N/a		N/a	**N/a**
Best Estimate	0		0	**0**

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

It has not been possible to monetise the costs associated with this option.

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

We anticipate there will be small start-up costs for installing audio visual equipment for virtual hearings (around £10k per court). However, as the vast majority of the 85 Coroners' Courts have already installed such equipment during the current pandemic, and some may choose not to, these additional costs have not been quantified.

The running costs will be borne by LAs. They have not been monetised as they are not expected to be large.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/a		N/a	**N/a**
High	N/a		N/a	**N/a**
Best Estimate	0		0	**0**

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

There are no monetised benefits for the main affected groups.

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

This option will ensure that coroners' courts operate in line with other courts, bringing efficiencies to the courts and reducing unnecessary inquest procedures. There may be economies of scale from merging Coroner areas.

Coroners and their staff will be able to manage their caseload better by hearing inquests remotely or without a hearing at all in non-contentious cases. These measures will support coroners' courts with post-Covid recovery.

By reducing unnecessary inquest procedures, bereaved families and those who support them will benefit from being able to hold the funerals much quickly and from not having the additional stress of unnecessary processes. Bereaved families would benefit from not having to travel to attend inquests, reducing the stress of travel costs and the overall stress of the journey. They would also benefit from more timely inquests.

Key assumptions/sensitivities/risks	Discount rate	
No significant risks have been identified around this option.		

BUSINESS ASSESSMENT (Option 3)

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

Summary: Analysis & Evidence

Policy Option 4

Description: Legislate for a package of criminal court measures that will create a more efficient and accessible criminal court system

FULL ECONOMIC ASSESSMENT

Price Base Year 2021	**PV Base Year** 2021	**Time Period Years** 10	**Net Benefit (Present Value (PV)) (£m)**		
			Low: Optional	**High:** Optional	**Best Estimate: 35.9**

COSTS (£m)	**Total Transition** (Constant Price) Years		**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low	Optional		Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate	0.49		2.7	**21.2**

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

The annual average cost of these measures to HMCTS is expected to be £2.7m, with an estimated NPV of £21.2m over a 10-year appraisal period. These costs largely relate to investment in IT systems, as well as the additional costs to the magistrates' courts where cases will be moved from the Crown Court.

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

There will be non-monetised IT implementation and maintenance costs to HMCTS although it is not possible to isolate them from those of wider the Court Reform Programme. There will be some non-monetised costs to the Crown Prosecution Service (CPS), the Legal Aid Agency (LAA), HM Prisons and Probation Service (HMPPS) and court staff as changes in criminal court procedures may impact on their ways of working.

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	N/A		7.4	**57.1**

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

HMCTS and taxpayers will benefit from greater court efficiency and staff time savings where cases are moved from the Crown Court. These benefits are estimated to total £7.4m per annum and, over a 10-year appraisal period, giving an NPV of £57.1m. Monetised benefits, in terms of reductions in Co2 emissions, have also been identified where online processes mean defendants and solicitors no longer need to travel to attend court.

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

The main non-monetised benefits relate to the potential for delivering swifter criminal justice with fewer ineffective trials, leading to efficiency savings for HMCTS, CPS, LAA, the police and, ultimately, the taxpayer.

There will also be benefits for court users, such as defendants and victims, who can resolve their cases more quickly. There will also be benefits for potential jurors and the wider economy, both in terms of indirect loss of GDP and expenses, when a TEW defendant's case is tried in the magistrates' court instead of the Crown Court.

Key assumptions/sensitivities/risks	**Discount rate (%)**	3.5

It is assumed that in steady state, 60% of eligible defendants will engage with the court in writing/online - this assumption is carried throughout the appraisal. The assumption around the percentage of cases expected to be returned back to the magistrates' courts is uncertain, as is the change in any imposition losses to HMCTS should the Standard Statutory Penalty amounts change. Sensitivity analysis has been carried out to show the change in NPV should these assumptions change. Further details can be found in the individual IA for this option.

BUSINESS ASSESSMENT (Option 4)

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

Summary: Analysis & Evidence

Policy Option 5

Description: Remove *Cart* JRs by making certain decisions of the Upper Tribunal final, and not subject to review by any other court, subject to certain exceptions.

FULL ECONOMIC ASSESSMENT

Price Base Year 2021	PV Base Year 2021	Time Period 10 Years	Net Benefit (Present Value (PV)) (£m)		
			Low:	**High:**	**Best Estimate:** £2.6m

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional		Optional	£0.7m
High	Optional		Optional	£0.9m
Best Estimate			£92,000	**£0.8m**

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

There will be costs to HMCTS from lost court fee income. After taking account of remissions, the net lost fee income is estimated at around £92,000 per annum.

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

Removing *Cart* JRs will affect those who would have otherwise won a case under this process. Although low, around 3% of applications for a *Cart* JR result in the permission to appeal decision being remitted to the UT, *and* the UT finding the original appeal in favour of the claimant at an appeal hearing. In future claimants will not be able to use this avenue and may not have recourse to the courts in a case they may have otherwise won. The majority of *Cart* cases relate to Immigration and Asylum, therefore those who do lose out as a result of this option are more likely to have particular protected characteristics, for example in respect of race and/or religion or belief.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional		£364,000	£2.8m
High	Optional		£402,000	£4.1m
Best Estimate			£364k-£402k	**£3.4m**

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

Based on average case numbers, we estimate that removing *Cart* JRs will save around 173-180 judicial sitting days per year in the High Court and UT. This gives rise to a non-cashable time savings of between £364k-£402k a year in saved judges time that can be used for other cases. This time saving is considerably larger than the estimated loss of net court fee income noted above and so is therefore consistent with the policy objectives.

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

The High Court and UT Judiciary will be able to use the time savings for other types of priority case where the rate of success is higher, therefore improving efficiency in the system. Government Departments involved in a *Cart* JR and subsequent appeals, such as the Home Office, will save on legal costs. However, this will not be a significant saving as most of the savings made will be spent on other cases.

Key assumptions/sensitivities/risks	Discount rate	3.5%

It is assumed that there would be no significant changes in case volumes and case outcomes were *Cart* JRs preserved
It is assumed that an average sitting day for a Judge in the High Court and Upper Tribunal is 6.5 hours. It is assumed that time spent per Cart JR in the Upper Tribunal is between 3-4 hours.
An optimism bias of 15% has been applied when calculating the NPV, which has been selected based on fluctuations in historic years of data, excluding extreme outlier years.
Legal service providers involved in *Cart* JR cases are assumed to transfer to activities of similar economic value.

BUSINESS ASSESSMENT (Option 5)

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

Summary: Analysis & Evidence

Policy Option 6

Description: Introduce new powers to suspend, remove or alter the effect of quashing orders. A non-exhaustive list of factors will accompany the powers for the court to consider when modifying an order, as well as a presumption to use these powers where they offer adequate redress.

FULL ECONOMIC ASSESSMENT

Price Base Year N/A	**PV Base Year N/A**	**Time Period Years** N/A	**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	Optional		Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate				

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

The cost of this option is negligible as no practical changes are necessary, only changes to the rules of the courts, which occur on a regular basis. It is not possible to accurately predict what cases may arise in the future when these powers may be used and what the impact of the use of these new remedies would be.

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

Claimants and those in their class may be impacted by the introduction of powers to modify quashing orders, as this could elongate the time before an order is quashed or limit the retrospective effects. However, negative effects such as this is expressly guarded against in the legislation.

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 benefits of this reform.

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

Parties who would be negatively affected by the bluntness of an immediate quashing order of invalidity, will, under new powers to modify orders, have more time to prepare for implementation. In cases where quashing orders of invalidity are modified to be prospective-only they may not face negative effects at all as their previous reliance on a decision would be upheld.

Defendants will have the opportunity to correct decisions/amend regulations. This will lessen administrative impacts, as there would be time to prepare for implementation and/or rectify small errors. Third parties may also benefit as they will be able to prepare for a decision/action being quashed, where they have not been able to previously.

Key assumptions/sensitivities/risks	**Discount rate**	
It is assumed that the identified factors will prevent the court from using remedies in a way that would cause unjust outcomes to claimants and others. It is assumed that case length or the time before a quashing order comes into effect may increase due to the introduction of these new powers, but only to a reasonable amount decided by the Judge in that specific case.		

BUSINESS ASSESSMENT (Option 6)

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

Evidence Base

A. Background

1. The Judicial Review and Courts Bill (JR&C Bill) will introduce reforms to Judicial Review to make sure the Government and public authorities are subject to the law, apply the intent of Parliament, and protect individuals' rights. It will also include a number of measures to help address the backlog across criminal courts, tribunals and Coroner's Courts and continue to modernise the delivery of justice and improve efficiency.

2. In particular, the JR&C Bill:

   - Introduces a number of court procedure measures across the criminal courts, Employment Tribunals and Coroner's Courts. These measures will streamline processes, saving time and money for the court system, and supporting court recovery.

   - Delivers the Manifesto commitment to "ensure that Judicial Review is available to protect the rights of the individuals against an overbearing state, while ensuring that it is not abused to conduct politics by another means or to create needless delays." This follows both the Independent Review of Administrative Law, which reported to the Lord Chancellor in January, and a government consultation.

   - Make amendments to primary legislation regarding the provision of courthouses to HM Courts & Tribunal Service (HMCTS) by the City of London Corporation. HMCTS and the City of London have agreed on a scheme where two courthouses are to be closed and replaced by a new combined courthouse on a different site within the City of London.

3. This overarching IA (OIA) summarises the main impacts of the above measures in the JR&C Bill. Further details of the impacts of each measure are contained in the individual Bill IAs.

<u>Employment Tribunals measures</u>

4. Employment Tribunals (ETs) were established by the Employment Tribunals Act 1996 (ETA) under the responsibility for the Department for Trade and Industry (now Business, Energy and Industrial Strategy (BEIS)).

5. Following the transfer of the ETs and the Employment Appeal Tribunal (EAT) to the then Tribunal Service in 2006, BEIS retained responsibility for the procedure in and governance of ETs as well as the overarching policy framework for ETs and the EAT. Therefore, responsibility for making changes to the regulations which determine procedural matters within ETs continued to rest with BEIS ministers who make changes to regulations to address specific policy issues, including those that may be raised in consultation with stakeholders.

6. ETs are, however, the only area of tribunal business where control over procedure rests with a Government minister. This contrasts with all other matters heard in the justice system where procedural rules are the responsibility of independent judicial-led committees.

7. In 2016 the Government consulted on reforming the ET structure and announced the intention to transfer responsibility for ET procedure regulations and EAT rules from the Secretary of State for BEIS and the Lord Chancellor respectively to the Tribunal Procedure Committee (TPC). The TPC is a is an advisory non-departmental public body that makes rules governing the practice and procedure in the First-tier Tribunal (FtT) and the Upper Tribunal (UT).

Online Procedure Rule Committee measure

8. On 15 September 2016, the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals published a joint statement of intent on 'transforming the justice system'. As part of this statement, and following the publication of the Civil Courts Structure Review, Ministers agreed to establish a new and simpler pathway to justice supported by a new online procedure. Such a procedure will feed into the wider court reform programme, by streamlining the rule making process and facilitating the shift to more digital ways of working.

9. An earlier Bill (the Prison and Courts Bill), which included similar provisions, was introduced into the House of Commons on 23 February 2017, but did not complete Committee stage before the dissolution of Parliament prior to the general election. Likewise, The Courts and Tribunals (Online Procedure) Bill, 2019, which sought to create an Online Procedure Rule Committee and had gone through the House of Lords, fell before the end of Committee Stage for the House of Commons at the dissolution prior to the 2019 General Election. The JR&C Bill contains similar provisions to these previous Bills.

10. The Online Procedure Rules Committee (OPRC) will be responsible for drafting rules to underpin the new online procedure, with the aim of making it easier for parties to resolve disputes earlier using effective triage services and online dispute resolution, or via a mediated settlement, so reserving judicial time for only the most complex cases.

11. The OPRC would have the ability to make Online Procedure Rules not only for civil proceedings, but also for family proceedings and proceedings in tribunals. The OPRC would not, however, be able to make rules for criminal proceedings.

Coroner's courts measures

12. Coroners are independent judicial office holders who have a duty to investigate deaths reported to them that may be violent or unnatural, that have an unknown cause, or that occurred in prison or in other state detention. Coroner services are local services, funded and run by individual local authorities (LAs). There are currently 85 coroner areas in England and Wales. The Chief Coroner provides leadership, support and guidance to coroners.

13. The purpose of a coronial investigation is to determine four questions: who the deceased was and how, when and where they died. Coroners are prohibited from determining civil or criminal liability. An inquest is a public court hearing held by a coroner to determine the above four questions. The vast majority of inquests are held without a jury but a jury must by law be called where the death occurred in custody or other state detention, if it resulted from an accident at work or if the coroner considers that there is sufficient reason for doing so.

14. In many of the approximately 30,000 inquests each year, those most likely to attend – the bereaved family - are content not to do so. A coroner can currently only discontinue an investigation where the cause of death is revealed by a post-mortem examination. If the cause of death is revealed otherwise, the investigation has to proceed to an inquest. A number of coroner areas have seen a backlog of their jury inquest cases, and in particular, jury and non-jury complex inquests due to the current social distancing requirements.

15. The Coroners and Justice Act 2009[1] (the 2009 Act) provides the legislation which regulates coroner services and inquests. The five measures we are proposing would be amendments to current legislation as laid out in the 2009 Act. The aim of the proposed amendments is to bring coroner's courts in line with mainstream courts and tribunals and to streamline inquest procedures; saving time and money for local authority run coroner services. The measures

[1] Coroners and Justice Act 2009 (legislation.gov.uk)

would also support coroner's courts as they plan for post Covid-recovery. Additionally, they will make it easier to merge coroner areas if the merger of two coroner areas would not constitute the entire local authority area, which will cure a current anomaly in the 2009 Act.

Criminal Court measures

16. The criminal court system is comprised of magistrates' courts, the Crown Court, and the criminal division of the Court of Appeal. There have been two notable reviews of the criminal court system in England and Wales in recent decades: Sir Robin Auld in his 'Review of the Criminal Courts (2001)'[2] and Sir Brian Leveson in his 'Review of Efficiency in Criminal Proceedings (2015)'.[3] Both of these reviews identified improvements that could be made to the structure, processes, and efficiency of the criminal justice system (CJS).

17. In September 2016, the then Government published its consultation paper titled 'Transforming our Justice System', which was released in tandem with a joint statement by the Lord Chancellor, Lord Chief Justice of England and Wales, and the Senior President of Tribunals.[4] The joint statement described plans for a modern court system, shared by the Government and senior judiciary, stating 'the vision is to modernise and upgrade our justice system so that it works even better for everyone, from judges and legal professionals, to witnesses, litigants and the vulnerable victims of crime.' The statement also identified a number of 'real challenges' that still remain in the justice system through inefficient and outdated processes.

18. The JR&C Bill, in combination with amendments to secondary legislation (primarily under the Criminal Procedure Rules ("the CrimPRs")), will introduce a wide range of legislative criminal court measures that will help us to continue to realise the vision for our criminal courts that was described in the 2016 joint statement, as well as delivering on more of the recommendations that featured in Lord Justice Auld's and Lord Justice Leveson's previous reviews of the criminal court system.

19. These measures will also form part of HMCTS's ongoing criminal court reform programme, in which the Government is investing over £1 billion to transform the courts and tribunals system, and a further £142 million of Covid funding to upgrade court buildings so that they are digitally enabled. The legislative measures will enable key parts of the reform programme so that we can continue to deliver vital improvements to the criminal court system and modernise the delivery of justice; this includes digitising and streamlining preliminary pre-trial court proceedings, removing unnecessary court hearings, and forging stronger links between the Crown Court and magistrates' courts. This will make our criminal court system more easily accessible to users and provide greater flexibility for the effective deployment of its resources; saving court time, reducing delays, delivering swifter justice, and supporting recovery in the wake of the coronavirus pandemic.

Judicial Review measures

20. Judicial Review (JR) is a process by which the lawfulness of decisions and actions of those carrying out public functions can be challenged in the courts. It is a mechanism which helps

[2] *A review of the Criminal Courts of England and Wales, Rt. Hon Robert Auld, LJ [2001]*

[3] *Review of Efficiency in Criminal Proceedings, Rt. Hon Sir Brian Leveson, LJ [2015]* https://www.judiciary.gov.uk/publications/review-of-efficiency-in-criminal-proceedings-final-report/

[4] *Transforming our Justice System, p3:* Transforming Our Justice System By the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals (publishing.service.gov.uk)

to give force and effect to the concept of the rule of law, providing citizens with a way to ensure that those holding public office or exercising authority use their powers according to the law, and within the bounds of the authority granted to them.

21. JR is not concerned with the merits of a decision, but with whether it was lawfully made. In England and Wales, an application for JR can be brought on the grounds of illegality, procedural unfairness, unreasonableness/irrationality, or for breach of the Human Rights Act 1998. The court 'reviews' the decision at issue and decides if it is flawed and, if it is, may grant remedies.

22. In England and Wales, applications for JR are made to the Administrative Court, in the Queen's Bench Division of the High Court. In Northern Ireland, applications are made to the High Court (Northern Ireland); and in Scotland, to the Court of Session (Outer House). The High Court has six remedies available to it in dealing with a JR, three of which are specific to judicial reviews (the "prerogative remedies"):

    a. An order quashing the decision in question. A quashing order quashes, or sets aside, the decision, thereby confirming that the challenged decision has no lawful force and no legal effect. After making a quashing order the Court will generally remit the matter to the public body decision maker and direct it to reconsider the matter and reach a fresh decision in accordance with the judgment of the Court.[5] (quashing order, previously certiorari)

    b. An order restraining the body under review from acting beyond its powers (prohibiting order, previously prohibition).

    c. An order requiring the body under review to carry out its legal duties (mandatory order, previously mandamus).

23. The High Court can also make declarations, issue injunctions, and (rarely) grant damages.

24. Due to the way JR has developed, however, there have been several instances where the courts have not had remedies at their disposal that may have been sufficiently flexible and effective. This is the case in instances where a quashing order or declaration of invalidity risks having arguably serious implications for third parties, or national security, or would have serious economic or administrative implications. As a result, the JR&C Bill will give the courts additional powers with regard to quashing orders: to suspend their effect; and to limit or remove the retrospective effect of any quashing order

25. A 'Cart' JR is the means by which an application for JR can be made to the High Court of a decision of the Upper Tribunal (UT) to refuse permission to appeal the decision of the First Tier Tribunal (FTT) where the decision is affected by an error of law (and therefore the UT's decision was also affected). This is a result of the Supreme Court ruling in *R (on the application of Cart) v The Upper Tribunal* [2011] UKSC 28 for England and Wales, alongside the Scottish case raising similar points, judgment for which was given separately by the Supreme Court (*Eba v Advocate General for Scotland* [2011] UKSC 29).

26. Since this route was created, there have been around 750 'Cart Judicial Reviews' per year for England and Wales. However, and on the basis of the data, the 'success rate' of *Cart* cases is substantially lower than the average success rate for other types of JR which is typically in a range of 30% to 50%. For *Cart* JRs, the 'success rate' is around 3.4%[6].

[5] Ibid., section 11.4.

[6] Further details of how this figure has been calculated are included in the Annex to the relevant individual IA.

27. In its 2019 General Election manifesto, the Government stated its commitment to "ensure that Judicial Review is available to protect the rights of the individual against an overbearing state, while ensuring that it is not abused to conduct politics by another means or to create needless delays". To address this commitment, on 31 July 2020 the Independent Review of Administrative Law (the IRAL) was established to examine trends in JR and to deliberate on any recommendations for reform. The IRAL was conducted by a panel of experts (the Panel) chaired by Lord Faulks QC.

28. The Panel's Report, (including their call for evidence) plus evidence from the Government's subsequent six-week consultation on policy options, provide the basis of the JR proposals in the JR&C Bill which this OIA supports although some of the Bill measures go beyond those recommended by the Panel.

29. While the majority of the Bill's JR provisions will apply to England and Wales only, some measures (such as reversing *Cart*) will apply UK wide in respect to reserved powers.

City of London Courthouses measure

30. The legislative changes being proposed for the City of London project do not lead to any impacts that can be assessed at this stage and so are not presented as a separate option.

31. Although the legislative changes will remove the duty on the City of London Corporation to provide courthouses at their current locations, the commencement will not take place until the new court is ready for occupation. Courts will continue to be provided at the existing sites until the new court becomes operational in 2026. The new courthouse provision will be governed by a 125 year lease which will be signed before existing legislation is repealed. An IA is therefore not required as part of this legislative change, but any impacts will be assessed as part of the wider project.

B. Policy Rationale and Objectives

Rationale

32. The conventional economic approaches to Government intervention are based on efficiency or equity arguments. Governments may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or there are strong enough failures in existing Government interventions (e.g. waste generated by misdirected rules) where the proposed new interventions avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and distributional reasons (e.g. to reallocate goods and services to more vulnerable groups in society).

33. The primary rationale for intervention for all the options in this OIA is efficiency:

- Maintaining outdated and inefficient rules and processes in the courts and tribunals are costly for government and court users, including businesses and bereaved families. Allowing for such rules and procedures to be removed or updated on a more consistent and timely basis, including in response to the Covid-19 pandemic, will make the courts and tribunals more efficient for all users, so saving money to sponsoring departments and the taxpayer and, for bereaved families, reducing unnecessary delay and distress. Allowing the merger of coroner areas within an LA will also create efficiencies from economies of scale and reduced resource use.

- The criminal court measures seek to increase the efficiency of the criminal court system by providing court time savings, a reduction in delays, greater flexibility for the

effective deployment of its resources, and support for its recovery in the wake of the coronavirus pandemic. There is also an equity rationale to ensure the criminal court system is more easily accessible and works more intuitively for the people who use it.

- Reforming JR will increase the efficiency and efficacy of the courts by ensuring that the JR avenues available are an efficient use of scarce judicial resource and that the remedies available to the courts upon a successful JR are effective.

Policy Objectives

Employment Tribunals measures

34. The associated policy intent of these measures is to provide that the procedures and practices in the ETs are better aligned with those that apply to the unified tribunal system. In particular, the objective is to create consistency of approach between i) the ET and EAT and ii) the First Tier Tribunal (FtT) and the UT concerning: rule making; the arrangements for delegating judicial functions to suitably qualified staff; the determination of panel composition in the ETs; and the remuneration of ET judges.

35. These arrangements will also allow for a quicker response to the need to introduce, amend or revise ET procedure rules to help address the current backlog in outstanding ET claims as well as dealing with other changing circumstances.

36. We believe that the TPC is better placed to make and amend rules for the ETs given that it is an independent rule committee.

37. Although the policy intention is to make the arrangements between the ETs and other tribunals more consistent, the existing distinct and separate structure of the ETs and EAT will be retained. The intention is therefore that they remain outside the unified tribunal structure.

Online Procedure Rule Committee

38. Working with the senior judiciary, the government has concluded that continuing gradual reform of the justice system based on individual jurisdictions will not be sufficient to deliver the level of change needed and at the pace required, either in terms of delivering the system-wide improvements needed by court users or the reduced costs needed to ensure that the system delivers justice in a proportionate and sustainable way. Instead it is seeking to take forward a radical and ambitious programme of reform that will apply common online design features and principles across the Civil, Family and Tribunal Jurisdictions.

39. Therefore, the associated policy objective of this measure is to allow the development of online procedural rules through the OPRC which will fundamentally change the user experience and reduce costs by providing online rules which will be more accessible, intelligible and simple to navigate. This will help to create a court and tribunal system that will proactively help people to navigate their online claims based on the core principles of early facilitation, containment and early resolution which has the minimum number of steps possible that people need to go through to obtain justice while improving access to justice.

40. The online procedure will allow us to launch straightforward digital services that allows everyone to access and understand the system. As online rules develop across the Civil, Family and Tribunal Jurisdiction, we expect that many more cases will be resolved entirely online, with clear information about what is happening and what to do next, as well as openness and scrutiny by the public regarding the nature of rules being applied.

Coroner's courts measures

41. The aim of the CJA 2009 along with the Rules and Regulations to underpin it which were implemented in 2013 was to put families at the heart of the coronial process and this has long been a priority for the Ministry of Justice and its Ministers. Implementing these measures will support the objective of ensuring the coronial process is sensitive to the needs of bereaved people, in particular by reducing the distress caused by unnecessary procedures. These measures will also support coroner's courts with post-Covid recovery.

42. In addition, successive Annual Reports to the Lord Chancellor, Chief Coroners have suggested amendments to the CJA 2009 which would bring significant advantages to the coroners' courts and ultimately save money for the LAs which fund them and the taxpayer.

Criminal court measures

43. The associated policy objectives for the criminal court measures in the JR&C Bill are to:

    a. Deliver swifter criminal justice.

    b. Improve administration and case management across magistrates' courts and the Crown Court.

    c. Provide more ways for people to engage with criminal court processes.

44. In addition, and as noted above, these measures will support the wider court reform process.

Judicial Review measures

45. The associated policy objectives for the JR measures in the JR&C Bill are to:

    a. Reduce the inefficient use of judicial resource

    b. Prevent administrative problems following JRs and, where appropriate, give defendants the opportunity to rectify any errors in a way which is equitable for claimants.

46. More specifically, the number of *Cart* JRs which are successful for the claimant since its introduction have been extremely low in comparison to non-*Cart* JRs. Therefore, it is difficult to justify the continuance of such an avenue and use of resource for such a low success rate. The analysis by which we reached this conclusion is set out in the individual IA for Judicial Review, published alongside this one. Likewise, the JR remedies currently available to the courts are insufficiently flexible and increasing this flexibility will allow for better administration, as defendants will be afforded opportunity to rectify errors in a more efficient manner, where such a remedy also affords the claimants adequate redress.

47. Giving the courts flexibility with these new powers is essential for JR to benefit good administration, and to provide claimants with appropriate remedies. The current remedies do not allow for more nuanced or unprecedented scenarios where time is needed to prepare for the effects of a quashing order or declaration. Such powers would not undermine the principles of JR, but simply provide more ways for decisions to be altered and prepared for, and to maintain constitutional boundaries between the executive and the judiciary.

C. Affected Stakeholder Groups, Organisations and Sectors

48. The following groups will be most affected by the options analysed in this IA.

- The Ministry of Justice (MoJ)
- HMCTS, who have operational responsibility for the civil, family and criminal courts and the tribunals, and court staff;
- Civil & Family Court and Tribunal users including individuals and employers involved in employment-related disputes, parents & guardians, bereaved families, and individuals, businesses, and third sector organisations, including litigants in person, involved in civil and family disputes;
- Legal service providers, including solicitors and barristers.
- The Judiciary;
- The Chief Coroner, Coroners and their investigating officers and administrative staff;
- Police Services and other agencies who investigate criminal offences.
- The Crown Prosecution Service (CPS) and other agencies who prosecute criminal cases.
- HM Prison & Probation Service (HMPPS).
- The Legal Aid Agency (LAA) who fund defences in criminal trials.
- Local Authorities, who fund coroner services, and government departments, such as Ministry of Housing, Communities and Local Government (MHCLG), who fund LAs.
- Organisations which support bereaved families through the inquest process (e.g. the Coroners Courts' Support Service, INQUEST) and those who provide support to people in the criminal justice system.
- Public sector organisations who are defendants in JR cases.
- Defendants in trials prosecuted in the criminal courts.
- Victims and witnesses of crimes that are prosecuted at a criminal court.
- Members of the public who act as jurors in Crown Court trials.
- Taxpayers, who subsidise HMCTS as its overall income falls below its overall costs;

E. Description of options considered

49. To meet the policy objectives, the following options are considered in this IA:

- **Option 0/Do Nothing: Maintain the status quo across the courts and tribunals.**

- **Option 1: Transfer procedure regulation and rule-making powers to the TPC, and more closely align the ET and EAT with the First-tier Tribunal and Upper Tribunal.**

- **Option 2: Establish an OPRC for the civil, family and tribunals jurisdictions.**

- **Option 3: Legislate for a package of amendments to the Coroners and Justice Act 2009 to streamline corners' inquest procedures.**

- **Option 4: Legislate for a package of criminal court measures that will create a more efficient and accessible criminal court system.**

- **Option 5: Remove Cart JRs by making certain decisions of the UT final, and not subject to review by any other court, subject to certain exceptions.**

- **Option 6: Introduce new powers to suspend, remove or alter the effect of quashing orders. A non-exhaustive list of factors will accompany the powers for**

the court to consider when modifying an order, as well as a presumption to use these powers where they offer adequate redress.

50. Options 1-6 are the Government's preferred options as they best meet the policy objectives.

Option 0

51. Under the Do Nothing option, the problems identified above would continue. Therefore, this option has been rejected as it would not address the policy objectives.

Option 1: Transfer ET procedure regulation and EAT rule making powers to the TPC, and more closely align the ET and EAT with the First-tier Tribunal and Upper Tribunal.

52. Under this option, the procedure regulation and rule-making powers for the ET and EAT would transfer to the TPC.

53. In addition, the following measure will also be implemented:

- Widening the existing power to make rules in the ET and the EAT so that it is equivalent to the TPC's rule making power under the Tribunals Courts and Enforcement Act 2007;
- Providing for two additional members to be appointed to the TPC: an employment judge to be appointed by the Senior President of Tribunals (SPT) and an employment practitioner to be appointed by the Lord Chancellor;
- Allowing for the delegation of judicial functions in the ET and the EAT to legal case officers;
- Making the Lord Chancellor responsible for determining the composition of the employment tribunals and EAT on the same basis that he does for the FtT and UT; and
- Transferring responsibility for the remuneration of ET judges from the SoS BEIS to the Lord Chancellor

Option 2: Establish an OPRC for the Civil family and tribunals jurisdictions.

54. This option will establish a new OPRC with the power to make Online Procedure Rules for civil and family proceedings and proceedings in tribunals (including ETs). The role of the Committee will be to provide new, simple rules for online procedure which are intelligible to, and easily navigable by, all people who rely on the courts system.

55. The OPRC will be responsible for drafting rules to underpin the new online procedure, with the aim of making it easier for parties (including litigants in person) to resolve disputes earlier using effective triage services and online dispute resolution, or via a mediated settlement, so reserving judicial time for only the most complex cases.

56. This option will not, of itself, create new areas of online working. Regulations (subject to the affirmative resolution procedure) must stipulate the proceedings in respect of which the OPRC may make rules. We expect the OPRC to start by focusing on the areas of digital working that already form part of our modernisation programme to ensure that procedure rules in these areas are simple, intuitive and accessible for the public. The OPRC will do this by making rules easier to understand and navigate by focussing on three core areas:

    - Devising new rules that will focus on users being able to solve grievances and resolve their issues online at the earliest opportunity, that is, to categorise their difficulties, and understand both their entitlements and the options available to them.

It is also expected that being better informed will help court users to resolve difficulties or complaints before they develop into substantial legal problems.

- Enabling the development of new rules to express a greater emphasis on online facilitation and early resolution. This facilitation is in the spirit both of ADR (alternative dispute resolution) and of EDR (early dispute resolution).

- Opening up the opportunity to build on existing digital pilots to continue to identify opportunities, where appropriate, for more streamlined hearings that reflect the needs of the users and are more proportionate to the case. This could, where appropriate, be largely on the basis of papers submitted electronically as part of a structured process of making and responding to an online claim and the broader use of technologies such as video hearings and teleconferencing (where separately provided for in existing legislation and rules). This process will be supported, where necessary, by assisted digital support.

Option 3: Legislate for a package of amendments to the Coroners and Justice Act 2009 to streamline corners' inquest procedures.

57. This option contains five elements which will amend existing legislation and allow:

- Discontinuance of an investigation where cause of death becomes clear;
- Power to conduct non-contentious inquests in writing;
- Use of audio or video links at inquests;
- Inquests to be held without a jury if a death is suspected to have been caused by COVID-19 (a notifiable disease) ;
- The merger of coroner areas within a local authority where the new area will not be the entire local authority area.

58. The first amendment will allow a coroner to discontinue an investigation where the cause of death is found to be natural causes. This will mean that coroners would no longer need to continue an investigation and hold an inquest where the outcome is already a forgone conclusion. This measure will also address an unnecessary step which is time consuming, costly and adds to the distress of the bereaved family. This measure has been a long-standing policy suggestion in successive Chief Coroner's Annual Reports to the Lord Chancellor since 2015.

59. The second amendment will allow a coroner the discretion to deal with inquests without a hearing in non- contentious cases, with the agreement of the bereaved family and where there is no practical or public interest in doing so. This will assist coroner services deal with the backlog of cases that has arisen as a result of Covid-19 and, in the longer run, help coroners to utilise their court spaces efficiently, freeing up court hours/space for inquests which do need a hearing while saving money. This proposal is also a long-standing Chief Coroner policy suggestion made in Chief Coroner's Annual Reports since 2016.

60. The third amendment will allow pre-inquest reviews and inquests to take place where all participants, including the coroner, can participate remotely. With a number of coroner areas reporting backlogs of inquests (in particular jury and non-jury complex inquests) this amendment will ensure coroners have the flexibility to start to hold inquests remotely whilst complying with Covid-19 social distancing requirements and will help mitigate backlogs of inquests in the event of a further Covid-19 wave. This will also help reduce delays and the additional distress for bereaved families awaiting the hearing of the inquests into the deaths

of their loved ones while freeing up court space for those cases that cannot be heard remotely. This amendment will also create parity with other courts.

61. The third amendment will allow a coroner the discretion to deal with inquests without a hearing in non- contentious cases, with the agreement of the bereaved family and where there is no practical or public interest in doing so. This will assist coroner services deal with the backlog of cases that has arisen as a result of Covid-19 and, in the longer run, help coroners to utilise their court spaces efficiently, freeing up court hours/space for inquests which do need a hearing while saving money. This proposal is also a long-standing Chief Coroner policy suggestion made in Chief Coroner's Annual Reports since 2016.

62. The fourth measure will seek to replicate Section 30 of the Coronavirus Act into the CJA 2009 on a temporary basis. Coroners may, however, still conduct an inquest with a jury if death is suspected to have been caused by COVID-19, should they wish to do so, where they think there is good reason to do so.

63. Only a small proportion of the excess deaths that result from the pandemic are likely to require an inquest, given that the majority will be considered natural cause deaths. However, if all inquests where COVID-19 was a factor required a jury, it would overwhelm already stretched coroner services: it would substantially increase the annual number of jury inquests thereby adding to the time and resources required to conduct them. This would contribute to substantial delays in concluding inquests into deaths where it was suspected COVID-19 was the cause, adding to the distress of bereaved families seeking to know how their loved ones died. It would also add to the delays in non-COVID-19 related inquests (jury and otherwise).

64. Section 30 of the 2020 Act has been welcomed by the Chief Coroner, coroners and the public, and whilst inquests overall have been delayed these provisions will ensure further delays will not be imposed by the need to conduct an inquest with a jury in Covid-related cases.

65. The fifth amendment will allow the merger of coroner areas within an LA where the new coroner area would not be the entire LA area. It is a long-standing central government and more recently Chief Coroner objective to merge coroner areas when the opportunity arises to improve consistency of coroner provision and standardise practice.

66. This measure will also address a quirk in the drafting of the CJA 2009 which requires a merged coroner area to be a LA or larger. This will ensure that where the opportunity arises, coroner areas would be able to merge within the confines of the CJA. This proposal is also a long-standing Chief Coroner policy suggestion with proposals being put forward in Chief Coroner's Annual Reports since 2016.

Option 4: Legislate for a package of criminal court measures that will create a more efficient and accessible criminal court system.

67. This option will introduce a package of measure that will:

- Enable defendants to indicate a plea in writing/online without the need for a magistrates' court hearing for all summary-only (SO), indictable-only (IO), and triable either-way (TEW) offences.
- Implement a new automatic online conviction and standard statutory penalty procedure for specified SO non-imprisonable offences, which will enable defendants who wish to plead guilty to choose to have their entire case completed online without the involvement of the court.

- Enable magistrates' courts to proceed with the 'allocation decision' procedure for TEW cases in writing/online without the need for a magistrates' court hearing.
- Provide magistrates' courts with the chance to bypass the allocation decision procedure for TEW cases by providing defendants with an earlier opportunity to elect for a jury trial at Crown Court.
- Enable magistrates' courts to proceed with the plea-before-venue and allocation decision procedures for TEW cases in the absence of defendants who fail without good cause to appear at court for their hearing.
- Enable magistrates' courts to send IO and TEW cases to the Crown Court for a jury trial or sentencing, without the need for a first hearing at magistrates' court.
- Remove the requirement set out in statute that magistrates' courts must be divided into separate Local Justice Areas.
- Enable the Crown Court to return certain cases back to a magistrates' court for trial (with a defendant's consent) or for sentencing (where a magistrates' courts sentencing powers are deemed to be sufficient) in a wider range of circumstances.
- Remove the statutory requirement to hold court hearings in order to determine applications for a witness summons or the lifting of reporting restrictions, so that decisions can be made 'on the papers' instead in accordance with the Criminal Procedure Rules (CrimPRs).
- Remove the statutory requirements for documents to be sent by post so that they can be served in accordance with the CrimPRs, including by electronic means via the new Common Platform.
- Enable variation of the limit on magistrates' court sentencing powers between 6 months and 12 months as a maximum sentence.

68. Enabling a defendant to enter a plea in writing/online without the need for a magistrates' court hearing will involve amending the alternative section 12 procedure that currently enables defendants to plead guilty by post to less serious SO offences, so that it can also be applied to prosecutions that are initiated against defendants aged 16 years and over who are charged in person at a police station and granted police bail to appear at a magistrates' court for a first hearing. The alternative section 12 procedure will also be made available online so defendants can engage with the process electronically instead of by post if they so wish (like the online service that is already in place for the Single Justice Procedure (SJP)).

69. This measure will also amend the Magistrates Court Act 1980 (MCA) and the CrimPRs so that defendants of all ages who are prosecuted for more serious SO offences (that were not suitable for the section 12 procedure or the SJP), IO offences, and TEW offences, can be provided with the choice to indicate a plea in writing/online via the new Common Platform, without the need for a hearing at a magistrates' court. A defendant will need to have legal representation in order to provide a written/online indication of plea for these types of offences because access to the Common Platform will be restricted to CJS professionals and practitioners.

70. Implementing a new automatic online conviction and standard statutory penalty (AOCSSP) procedure for specified offences will, if the prosecutor considers an individual case to be appropriate, allow the defendant to be offered the option of resolving their case via this new procedure. Defendants who plead guilty and are offered this procedure will still have to actively opt in to confirm that they wish to use it: it is not a default. Progressing through the online system, the defendant will be given all the relevant information needed to make an informed decision about their choice of procedure. This information will include full provision of information about the charges and evidence against them; the different options available

for dealing with their case; the financial implications of the standard statutory penalty; the disclosure regime surrounding the offence they are charged with; and the consequences of pleading guilty and accepting a criminal conviction.

71. The Bill will enable magistrates' courts to proceed with the 'allocation decision' procedure for TEW cases in writing/online without the need for a magistrates' court hearing. It will not always be appropriate for the court to provide a defendant with the choice to proceed with the allocation procedure in writing/online, so the CrimPRs will make provisions about the circumstances in which the new written/online procedures cannot be used for a case. This will ensure that the court can proceed to deal with the allocation decision via a defendant's appearance at a traditional court hearing where this more appropriate.

72. The Bill will provide magistrates' courts with the chance to bypass the allocation decision procedure for TEW cases by providing defendants with an earlier opportunity to elect for a jury trial at the Crown Court. This measure will amend the MCA 1980 by adding a new step to both the existing at-court procedures and new online/written procedures for plea before venue that will be applicable to adult defendants who indicate a not guilty plea to a TEW offence at a magistrates' court hearing or in writing/online. The new step will enable a magistrates' court to "invite" a defendant to inform the court that they would not consent to a summary trial if offered one, before the court was required to proceed with the allocation decision procedure.

73. The Bill will also enable magistrates' courts to proceed with the plea-before-venue and allocation decision procedures for TEW cases in the absence of defendants in a wider range of circumstances than the law currently allows, so long as the court does not consider that there is an acceptable reason for their failure to appear and is satisfied that it is in the interests of justice to do so. This could include for example, cases where an unrepresented defendant held on remand in custody refused to leave their cell or where a defendant absconded whilst on bail. In a case where an allocation decision was reached by a magistrates' court in a defendant's absence, the defendant will be assumed to have indicated a not-guilty plea and the magistrates' court will proceed to allocate the case for summary trial or send the case for jury trial on indictment, depending on the most suitable mode of trial. If an adult defendant's TEW case was allocated in their absence for a summary trial, the adult defendant will retain the right to elect for a jury trial at the Crown Court up until the summary trial begins, depending on the reasons why they failed to appear and so long as the court deems it is in the interest of justice.

74. The Bill will allow magistrates' courts to send IO and TEW cases to the Crown Court for a jury trial or sentencing, without the need for a first hearing at magistrates' court. It will be a discretionary power, and the magistrates' courts will only deem that a case is suitable to be sent in this manner where it is appropriate to issue bail on the papers (e.g. where the court was content to grant unconditional bail or issue bail subject to the same conditions mandated by police bail).

75. The Bill will remove the requirement set out in statute that magistrates' courts must be divided into separate Local Justice Areas (LJA). Primary legislation will be amended so that magistrates' courts are no longer divided into separate geographic jurisdictions and will instead create a more unified magistracy and a new set of principles for deciding how work and magistrates are allocated. The provision will require a number of consequential amendments to existing legislation in order to remove and replace references to LJAs; however, the legislation will include a delegated power which will allow any references to LJAs to be amended through secondary legislation. This measure will also mean that the future leadership and organisation of magistrates will become a matter for the judiciary, in the same way as in other jurisdictions.

76. The Bill will also enable the Crown Court to return certain cases back to a magistrates' court for trial in a wider range of circumstances. The intention is that this transfer back to the lower court will happen if the Crown Court is satisfied that the case can be appropriately dealt with in the magistrates' courts in accordance with the current allocation guidelines.

77. The Bill will also amend legislation to enable or facilitate the making of certain preliminary decisions to lift reporting restrictions and determine applications for a witness summons, based on documents before the court, without the need for a hearing. Taking into consideration any representations made by parties, the decision whether to hold a hearing in these circumstances will always be for the court and will have to comply with fair trial rights.

78. The Bill will also amend primary legislation so that documents in criminal court proceedings can be served in accordance with CrimPRs. As a result of this change, the service of such documents will be completed by whichever means is the most appropriate in any given case, including by electronic means via the new Common Platform.

79. Finally, the Bill will include a provision to complement an existing policy to extend magistrates' court sentencing powers from a maximum of 6 months to 12 months imprisonment for a single triable either-way offence. This measure will allow for the sentencing limit to be varied back to 6 months, or increased again to 12 months, should the need arise. This power is not being used to commence the legislation but ensures that there is flexibility to respond to changing circumstances in the future.

Option 5: Remove Cart JRs by making certain decisions of the UT final, and not subject to review by any other court, subject to certain exceptions.

80. This option will remove *Cart* JRs through a narrow ouster clause (a clause in legislation which protects a body or person or class of decision from adjudication or review by the supervisory courts) in order to address the inefficient use of resources identified above and will address any concerns over the rule of law (which may reassure the courts that its jurisdictional oversight in this area is not completely removed). Further detail on *Cart* JR success rates and the associated resource savings from this option are located in the annex to the individual IA for Judicial Review, which has been published alongside this OIA.

Option 6: Introduce new powers to suspend, remove or alter the effect of quashing orders. A non-exhaustive list of factors will accompany the powers for the court to consider when modifying an order, as well as a presumption to use these powers where they offer adequate redress.

81. This option contains new powers that will give the court the ability to:

    a. Suspend the effect of any quashing order they make
    b. Limit or remove the retrospective effect of any quashing order

82. Suspended relief refers to a situation where the court will be able to suspend the effect of a quashing order it makes for a limited period of time. This will give the public body and any third parties affected time to prepare for the remedy to come into effect. The public body, in this intervening time, may remake its decision in a lawful manner, enact any transitional arrangements, or even seek to legislate, potentially retrospectively to preserve the state of the law as it was before the quashing order was made.

83. In this way the court's decision when making a suspended quashing order will be final – this is advantageous in terms of legal certainty and removes the bluntness of immediate quashing. What a suspended quashing order, as constituted above, will not do is give the

public body any opportunity to rectify or save the original unlawful decision through the legal process.

84. Limiting the retrospective effect of quashing orders, means the court will be able to provide for any quashing order to take effect from a certain point in the past or future. This will mean any reliance on a decision before that point would be upheld, but the decision could not be relied upon in the future.

85. A list of factors will guide the court's discretion in deciding whether to use any of these powers. These factors are non-exhaustive and the court will be able use its discretion to consider anything else it deems relevant. Instead, the listed factors will draw the court's attention to certain considerations the Government believes are important and of general applicability to these powers. The factors will be as follows:

    a. the nature and circumstances of the relevant defect;
    b. any detriment to good administration that would result from exercising or failing to exercise the power
    c. the interests or expectations of persons who would benefit from the quashing or invalidation of the impugned act;
    d. the interests or expectations of persons who have relied on the impugned act;
    e. so far as appears to the court to be relevant, any action taken or proposed to be taken, or undertaking given, by a person with responsibility in connection with the impugned act;
    f. any other matter that appears to the court to be relevant.

86. The legislation also includes a presumption which will serve to point the court towards consideration of using these new powers in circumstances where it appears to the court that these new powers would offer adequate redress. This also ensures that these powers are used where they do not prejudice the claimant's right to an effective remedy.

87. The legislation also provides that the use of these powers is possible regardless of any effects of invalidity or nullity. In using these powers, the decision is question will be treated as valid for the duration of any suspension, or for a period in the past when retrospective relief is limited or removed.

E. Cost and Benefit Analysis

88. This OIA follows the procedures and criteria set out in the IA Guidance and is consistent with the HM Treasury Green Book.

89. Where possible, IAs identify both monetised and non-monetised impacts on individuals, groups and businesses in England and Wales with the aim of understanding what the overall impact on society might be from the proposals under consideration. IAs place a strong focus on the monetisation of costs and benefits. There are often, however, important impacts which cannot sensibly be monetised. These might be impacts on certain groups of society or data privacy impacts, both positive and negative. Impacts in this IA are therefore interpreted broadly, to include both monetisable and non-monetisable costs and benefits, with due weight given to those that are not monetised.

90. The costs and benefits of each option are compared to option 0, the counterfactual or "do nothing" scenario. As the counterfactual is compared to itself, the costs and benefits are necessarily zero, as is its net present value (NPV).

91. The costs and benefits associated with Option 3, the Coroner's courts measures, and Option 6, additional court powers in respect of quashing orders in JR cases, have not been quantified and are expected to be minimal. As a result, only a qualitive assessment of their impacts is made in this OIA.

92. For those options where the costs have been monetised, an NPV has been calculated over a 10 year appraisal period. Where prudent, optimism bias was applied when calculating the NPV and the individual IAs provide further details as to how this was done, where relevant.

93. The following is a summary of the main impacts. Full details of the costs and benefits for the measures covered in this IA can be found in the individual IAs published alongside this one.

Option 1: Transfer procedure regulation and rule-making powers to the TPC, and more closely align the ET and EAT with the First-tier Tribunal and Upper Tribunal.

Costs of Option 1

Monetised costs

94. The TPC is likely to incur administration costs as a result of the change as well as for recruiting the additional TPC members. These are estimated at £3.5k per year.

Benefits of Option 1

Monetised benefits

95. No monetised benefits are expected.

Non-monetised benefits

96. The key benefit is anticipated to be a quicker response to the need to introduce, amend or revise ET procedures.

97. We expect that, over time, this option will lead to changes in the rules and procedures for the ET and EAT and but the nature of the changes and their impacts will depend on future decisions of the TPC, which cannot be known at this time.

Option 2: Establish an OPRC for the civil, family and tribunals jurisdictions.

Costs of Option 2

Monetised

98. It is estimated that it will cost the MoJ approximately £10k per year to run the OPRC. The running costs are for travel and subsistence, as well as publications. The £10K figure is based on an extrapolation of the running costs of existing rule committees. Over a 10-year appraisal period, this gives an NPV of £70k.

99. Other costs associated with this option, including the digitisation of services that may be brought under the remit of the OPRC, are already funded through the HMCTS Court Reform Programme, so the introduction of this legislation does not bring about any additional costs in that regard. Similarly, the duty on the Lord Chancellor to provide additional digital support is already funded through the Court Reform Programme.

Non-Monetised Costs

100. There may be wider costs for HMCTS associated with implementing the new rules and processes which the OPRC puts in place. However, as these are not the direct costs of this option, they are not captured in this IA.

Benefits of Option 2

Monetised benefits

101. It has not been possible to identify any monetised benefits associated with this option.

Non-monetised benefits

102. This option will enable the HMCTS court reform programme by facilitating the creation of a simplified rule making process which will in turn deliver simpler and more efficient court processes. However, as any benefits would relate to the new rules and processes themselves, they are not the direct benefits of this option and are not captured in this IA.

103. There could potentially be a greater number of court users using the online rules, depending on which of non-money claims and Family and Tribunals cases are added to the list of in scope case types. Due to this uncertainty, these benefits have not been monetised.

Option 3: Legislate for a package of amendments to the Coroners and Justice Act 2009 to streamline corners' inquest procedures.

Costs of Option 3

Non-monetised costs

104. We anticipate there will be small start-up costs for installing audio visual equipment for virtual hearings (around £10k per court). However, as the vast majority of the 85 Coroners' Courts have already installed such equipment during the current pandemic, and some may choose not to, these additional costs have not been quantified.

105. The running costs of implementing these measures will be borne by LAs. They have not been monetised as they are not expected to be large and would need to be set against the efficiencies these measures will give rise to (e.g., economies of scale through combining Coroner's areas).

Benefits of Option 3

Monetised benefits

106. No monetised benefits are expected with this option.

Non-monetised benefits

107. This option will ensure that coroners' courts are operating in line with other courts, bringing efficiencies to the courts and reducing unnecessary inquest procedures.

108. Coroners and their staff will be able to manage their caseload better by being able to hear inquests remotely or without a hearing at all in non-contentious cases.

109. These measures will also support coroners' courts with post-Covid recovery.

110. By reducing unnecessary inquest procedures, bereaved families and those who support them will benefit from being able to hold the funerals of their loved ones much quickly and

from not having the additional stress of unnecessary processes. Bereaved families would benefit from not having to travel to attend inquests, reducing the stress of travel costs and the overall stress of the journey. They would also benefit from more timely inquests.

Option 4: Legislate for a package of criminal court measures that will create a more efficient and accessible criminal court system.

Costs of Option 4

Monetised costs

111. The annual average cost of these measures to HMCTS is expected to be £2.7m, with an estimated NPV of £21.2m over a 10-year appraisal period. These costs largely relate to investment in IT systems, as well as the additional costs to the magistrates' courts where cases will be moved from the Crown Court.

Non-monetised costs

112. There will be non-monetised IT implementation and maintenance costs to HMCTS although it has not been possible to isolate them from those of wider the Court Reform Programme. There will be some non-monetised costs to the CPS, LAA, HMPPS and court staff as changes in criminal court procedures may impact on their ways of working.

Benefits of Option 4

Monetised benefits

113. The main benefits of these measures are to HMCTS and taxpayers from court efficiency savings where cases are moved away from the Crown Court as well as staff time savings. These benefits are estimated to total £7.4m per annum and, over a 10-year appraisal period, this gives an NPV of £57.1m.

114. Monetised benefits, in terms of reductions in Co2 emissions, have also been identified where online processes mean defendants and solicitors no longer need to attend court.

Non-monetised benefits

115. The main non-monetised benefits largely relate to the potential for the measures to deliver swifter criminal justice with fewer ineffective trials, leading to potential efficiency savings for HMCTS, CPS, LAA, the police and, ultimately, the taxpayer.

116. There will be greater certainty for victims and there will also be benefits for defendants, who will have their cases resolved more quickly.

117. There will be benefits to potential jurors and the wider economy in terms of the reduced indirect loss of GDP from the lost productivity of employed jurors and higher juror expenses, when a TEW defendant's case is tried in the magistrates' court instead of the Crown Court.

Option 5: Remove Cart Judicial Reviews by making certain decisions of the Upper Tribunal final, and not subject to review by any other court, subject to certain exceptions.

Costs of Option 5

Monetised costs

118. There will be costs to HMCTS from Option 5 from lost court fee income. Taking annual data from 2016-2019 (and thus avoiding outlier years such as 2020), there were, on average, around 750 *Cart* JR cases a year. Taking this average and considering the associated court fees, which range from £154 for a paper hearing to £770 for a substantive hearing, this amounts to an average yearly fee income of around £120,000. However, as some fees are remitted, the net lost fee income will be around £92,000 a year (more detail is in the individual Judicial Review IA, published alongside this one).

Non-monetised costs

119. Legal service providers who are involved in *Cart* JR cases may lose income as a result of this option. However, as is normally the case in IAs which seek to reform inefficiencies in legal processes, it has been assumed that legal services providers will be able to transfer their activities to those of similar, or next best economic value.

120. Removing *Cart* JRs will affect those who would have otherwise won a case under this process. Although low, around 3% of applications for a *Cart* JR result in the permission to appeal decision being remitted to the UT, *and* the UT finding the original appeal in favour of the claimant at an appeal hearing. In future claimants will not be able to use this avenue and therefore may not have recourse to the courts in a case they may have otherwise won, although the chances of doing so are small.

121. The majority of *Cart* cases relate to Immigration and Asylum, therefore those who do lose out as a result of this option are more likely to have particular protected characteristics, for example in respect of race and/or religion or belief.

Benefits of Option 5

Monetised benefits

122. Based on average case numbers, we estimate that removing *Cart* JRs will save around 173-180 judicial sitting days per year in the High Court and UT. This figure is a rough approximation as the time savings for the High Court are based on a time and motion study which looked at case types across courts but did not focus on a specific level.[7] The assumption was made that an average sitting day for a Judge is 6.5 hours, as per the Judiciary website.

123. The sitting day estimate above may be a slight overestimation, as it assumes all cases will go through to the paper stage, whereas in reality, a small proportion of cases will not make it to the paper stage. Even if the figure of 173-180 sitting days is an overestimation, it is clear that there will still be significant time savings.

124. Monetising these sitting day savings, we estimate that the non-cashable time savings will be between £364k-£402k a year in saved judges time that can be used for other cases. This time saving is considerably larger than the estimated loss of net court fee income noted in paragraph 116 and is therefore consistent with the policy objectives.

Non-monetised benefits

125. This option will allow the High Court and UT Judiciary to use the time for other types of priority case where the rate of success is higher, improving efficiency in the system.

[7] The link to the time and motion study is here: www.judiciary.uk/wp-content/uploads/2016/07/civil-courts-structure-review-final-report-jul-16-final-1.pdf. It is in Annex 4.

126. Government Departments involved in a *Cart* JR and subsequent appeals, such as the Home Office, will save on legal costs. However, this will not be a significant saving as most of the savings made will be spent on other cases.

Option 6: Introduce new powers to suspend, remove or alter the effect of quashing orders. A non-exhaustive list of factors will accompany the powers for the court to consider when modifying an order, as well as a presumption to use these powers where they offer adequate redress.

Costs of Option 6

Monetised costs

127. No costs associated with this option have been monetised.

Non-monetised costs

128. Claimants and those in their class may be impacted by the introduction of powers to modify quashing orders, as this could elongate the time before an order is quashed or limit the retrospective effects of the quashing order.

Benefits of Option 6

Monetised benefits

129. There are no monetised benefits of this option.

Non-monetised benefits

130. Third parties who would be negatively affected by the bluntness of an immediate quashing order or declaration, will, under new powers to modify orders, have more time to prepare for implementation. In cases where quashing orders are modified to be prospective-only some third parties may not face negative effects at all as their previous reliance on the decision will be upheld.

131. Third parties may also benefit as they will be able to prepare for a decision/action being quashed or invalidated, where they have not been able to previously.

F. Assumptions and risks

132. The above analysis is based on assumptions and for each there are associated risks. Due to the variety of measures included in the JR&C Bill, these assumptions and risks have not been listed in this OIA. They are, however, fully explored in the individual Bill IAs.

G. Wider impacts

Equalities

133. For the equalities impact for the measures detailed in this IA, please see the Equalities Statement that was published alongside the Bill.

Impacts for Immigration

134. It is well known that the High Court and Court of Appeal were subject to a high volume of JR applications in immigration and asylum cases until Parliament introduced a form of

statutory review of the refusal by the Immigration Appeal Tribunal of permission to appeal to that Tribunal in the Nationality, Immigration and Asylum Act 2002,101(2). However, the availability of judicial review was seen as a particular problem in the context of immigration and asylum appeals.

135. As the majority of Cart Judicial Reviews relate to immigration and asylum matters it is therefore reasonable to anticipate that Option 1 may have a differential impact on individuals with the protected characteristics of race and religion/belief. We consider that this could constitute indirect discrimination under the Equality Act, but that any such impact is likely to be extremely limited given that only around 3% of Cart Judicial Reviews ultimately succeed. Therefore, we think the policy is justified and that there is a good case for the preferred option. Further, removing Cart is not being pursued just in relation to immigration and asylum claims, but will render the whole Upper Tribunal not amenable to Judicial Review.

Better Regulation

136. These proposals are exempt from the Small Business Enterprise and Employment Act 2015 and will not count towards the department's Business Impact Target.

International Trade

137. There are no international trade implications from the options in this OIA.

Environmental Impact

138. There is a positive environmental impact as a result of some of the criminal court and coroners measures in this IA due to falling carbon emissions from a reduction in travel. This impact has been quantified in the benefits sections of the relevant individual IAs.

H. Monitoring & Evaluation

139. The legislation will be reviewed in line with post-legislative scrutiny procedures.

140. The measure which introduces the new AOCSSP procedure, will be reviewed after it has been in operation for a reasonable amount of time. Subject to the findings of this review of the initial three offences, we would seek to add a wider range of summary-only non-imprisonable offences to the procedure through secondary legislation.

141. It is intended that the measure which provides for variation in magistrates' court sentencing powers would be used only if necessary. A monitoring framework is being developed in order to measure the impact that extending magistrates' court sentencing powers has on the criminal justice system. The measure will be used in the event that any unsustainable pressures materialise as a direct response of this policy.

142. The other criminal court measures detailed in this IA that form part of the HMCTS court reform programme will be subject to a review in line with the public commitment by HMCTS to evaluate the impact of reform measures once the changes have been in operation for a reasonable amount of time.

143. Regarding the Judicial Review measures, we will use the quarterly civil justice statistics to monitor the impact of the removal of the Cart route of judicial review and, in particular, to identify whether there is any displacement of cases (i.e. challenges brought in a new or different route).