

Title: Reforming civil jurisdiction limits IA No: MoJ 067 Lead department or agency: Ministry of Justice Other departments or agencies:	Impact Assessment (IA)			
	Date: 2 February 2012			
	Stage: Final			
	Source of intervention: Domestic			
	Type of measure: Secondary legislation			
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Summary: Intervention and Options				RPC: RPC Opinion Status

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-Out?	Measure qualifies as
£m	£m	£m	Yes	Zero Net Cost

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

Currently, cases are issued in the High Court and County Court based on their financial value. However, the financial limits have not been changed for many years, resulting in many cases being allocated to an inappropriate court in terms of case complexity, before being subsequently transferred to the appropriate court. These proposals seek to ensure that cases are issued at the most appropriate level of court, reducing the administrative costs associated with transferring cases between the High Court and the County Court.

Government intervention is required as the changes can only be made via legislation.

What are the policy objectives and the intended effects?

The objective of the proposals is to improve the case allocation process and thereby reduce the resources devoted to transferring cases by enabling cases to be issued in the appropriate court. The intended effect is to reduce the number of case transfers and to ensure that only complex and specialist cases that require the expertise of the High Court are issued there. This should lead to efficiency benefits and may reduce waiting times for court users.

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

The following options have been considered:

Option 0: Do nothing (base case)

Option 1a: Increase the equity jurisdiction of the County Court from £30,000 to £350,000.

Option 1b: Increase the financial limit below which claims may not be commenced in the High Court from £25,000 to £100,000 with the exception of Personal Injury Claims which would have a limit of £50,000.

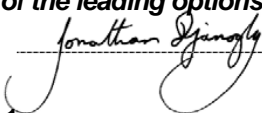
Option 1c: Extend the power to grant freezing orders to the County Court.

Option 1d: Remove certain types of specialist proceedings from the jurisdiction of County Court.

The preferred Option is to implement all parts of Option 1.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 04/2019					
Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro N/A	< 20 N/A	Small N/A	Medium N/A	Large N/A
What is the CO2 equivalent change in greenhouse gas emissions? (Million tonnes CO2 equivalent)			Traded: Not Quantified		Non-traded: Not Quantified

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:  Date: 2 February 2012

Summary: Analysis & Evidence

Policy Option 1a, 1b and 1c

Description: Increase the equity jurisdiction of the County Court to £350,000; Increase the financial limit below which claims may not be commenced in the High Court to £100,000; Extend the power to grant freezing orders to the County Court.

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: negligible	High: negligible	Best Estimate: negligible

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

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

Around 800 cases will in future require a transfer from the County Court to the High Court, generating some minor costs for court users in these cases relating to longer waiting times: a transfer can increase the time from issue to hearing by around 15 days. These costs have been scored as negligible in aggregate. There may be some negligible costs for HMCTS relating to changing the current allocation and case transfer rules, and training County Court judges to make freezing order application decisions.

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

There may be a small increase in waiting times for County Court users, as more cases will be issued in the County Court. This impact is not expected to be significant. Legal professionals may face a cost in terms of reduced demand if more legal input is required when waiting times are longer and if freezing order applications at the High Court generate larger legal costs, although the net impact on legal service providers is expected to be neutral, given the assumptions adopted.

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

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

Around 1,800 cases will in future no longer require a transfer from the High Court to the County Court, generating some minor benefits for court users in these cases relating to shorter waiting times: a transfer can increase the time from issue to hearing by around 15 days. These benefits have been scored as negligible in aggregate. Around 25 freezing order applications will in future be able to be made in the County Court, which should generate some negligible aggregate reductions in travel time and cost for court users, plus reductions in legal costs. HMCTS will also benefit from some minor reductions in administrative costs associated with making case transfers.

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

There may be a small reduction in waiting times for High Court users, as more cases will be issued in the County Court, and freezing order applications will in future be able to be made in the County Court. These benefits are not expected to be significant.

Key assumptions/sensitivities/risks

Discount rate (%)

N/A

The reduction in transfers is uncertain, a number of scenarios are presented in the Evidence Base. It is assumed that the same judicial discretion in relation to case allocation applies at the County Court and High Court, and that County Court judges would make equal decisions in relation to freezing order applications. It is therefore assumed that the proposal would have no impact on case outcomes. It is assumed that the proposal would have no impact on the volume of cases being pursued through the civil courts overall, the volume of freezing order applications made, nor the ability or willingness of court users to gain legal representation. It is assumed that legal service providers pass on any legal costs to court users. The level of HMCTS resources is not expected to change, and there is no expected impact on fees.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:	In scope of OIOO?	Measure qualifies as
Costs:	Yes	Zero net cost
Benefits:	Net: Not Quantified	

Summary: Analysis & Evidence

Policy Option 1d

Description: Remove certain types of specialist proceedings from the jurisdiction of County Court.

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: negligible	High: negligible	Best Estimate: negligible

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

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

Around 5 cases will in future require a transfer from the High Court to the County Court, generating some minor costs for court users in these cases relating to longer waiting times: a transfer can increase the time from issue to hearing by around 15 days. These costs have been scored as negligible in aggregate. There may be some negligible costs for HMCTS relating to changing the current allocation and case transfer rules, and training County Court judges to make freezing order application decisions.

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

There may be a small increase in waiting times for High Court users, as more cases will be issued in the High Court. This impact is not expected to be significant. Legal professionals may face a cost in terms of reduced demand if more legal input is required when waiting times are longer, although the net impact on legal service providers is expected to be neutral, given the assumptions adopted.

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

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

Around 115 cases will in future no longer require a transfer from the County Court to the High Court, generating some minor benefits for court users in these cases relating to shorter waiting times: a transfer can increase the time from issue to hearing by around 15 days. Legal costs may also be lower. These benefits have been scored as negligible in aggregate. HMCTS will also benefit from some minor reductions in administrative costs associated with making case transfers.

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

There may be a small reduction in waiting times for County Court users, as fewer cases will be issued in the County Court. These benefits are not expected to be significant.

Key assumptions/sensitivities/risks

Discount rate (%)

N/A

The number of specialist cases issued in the County Court is unknown, but a number of scenarios are presented in the Evidence Base. The number of transfers may increase if the financial limits are increased as proposed. It is assumed that the same judicial discretion in relation to case allocation applies at the County Court and High Court, and therefore that the proposal would have no impact on case outcomes. It is assumed that the proposal would have no impact on the volume of cases being pursued through the civil courts overall, nor the ability or willingness of court users to gain legal representation. Court fees for the cases in question are the same in the High Court and County Court. It is assumed that legal service providers pass on any legal costs to court users. The level of HMCTS resources is not expected to change following the proposal, and there is no expected impact on fees.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:		In scope of OIOO?	Measure qualifies as
Costs:	Benefits:	Net: Not Quantified	Yes
			Zero net cost

Evidence Base (for summary sheets)

1. Introduction

- 1.1 This Impact Assessment accompanies a Ministry of Justice (MoJ) response to a consultation on reforms to the civil justice system entitled *Solving disputes in the County Court: creating a simpler, quicker and more proportionate system: the Government Response*. The associated response to the consultation paper will be published on 2nd February 2012 and can be found at <http://www.justice.gov.uk/consultations/consultations.htm>.
- 1.2 The consultation response document sets out a series of measures designed to improve the experience of those using the justice system by improving processes and targeting cases towards the most appropriate services for resolution. They seek to ensure that there is increased ability to process more administrative work in the County Court, and to simplify the case allocation and transfer processes which determine the particular court at which a case is heard. The measures also seek to provide greater flexibility in the deployment of High Court judges at the County Court.
- 1.3 The aim is to provide a more streamlined, responsive and efficient civil justice system that better supports users. Where judicial intervention is required, the measures seek to ensure that courts are able to offer a range of quick and efficient services that meet the needs of the court user whilst delivering an effective and proportionate route to justice.
- 1.4 This Impact Assessment sets out four measures that aim to rationalise the jurisdiction in the civil courts between the County Court and the High Court. This would be achieved by: increasing the equity jurisdiction of the County Court¹; amending the financial limit below which money claims may not be commenced in the High Court; extending the power to grant freezing orders² to suitably qualified judges in the County Court; and removing some specialist proceedings from the County Court jurisdiction. These proposals are the recommendations of Sir Henry Brooke, which were formed based on previous consultation with the Judiciary and HM Courts and Tribunals Service (HMCTS).

Background

- 1.5 The civil court structure consists of the High Court and County Court. In general, the High Court is the court where complex cases and cases of public interest are heard, although there are a number of rules governing which tier of court a case can be heard in. Some of these rules concerning the jurisdiction of the High Court and County Court have remained unchanged for almost 30 years.
- 1.6 The High Court has an unlimited civil jurisdiction, whereas the jurisdiction of the County Court is limited in three ways: (1) a financial limit beyond which the County Court has no jurisdiction to hear the case; (2) a geographical limitation where the court determines the appropriate venue for hearing; and (3) restrictions on the powers of the County Court to grant remedies, which includes that the County Court cannot grant freezing orders. Cases are allocated and transferred between the High Court and County Court in accordance with the issues under consideration, with the financial value of a claim acting as a benchmark for where a claim is issued.
- 1.7 In general, cases relating to a claim for less than £25,000 are issued in the County Court, unless the claim is for damages in respect of personal injuries (cases less than £50,000 are issued in the County Court) or if the claim relates to equity, contentious probate, the enforcement of charging orders, or company law (cases less than £30,000 are issued in the County Court).
- 1.8 However, the financial value of a claim is not the only determinant for where the claim will eventually be heard. The High Court and County Court are required, by law³, to consider a list of

¹ The Equity jurisdiction in the County Court is defined in the County Court Act 1984 and annexed at the end of the document

² A freezing order is a court order to freeze the assets of a defendant, a person who has gone overseas, or of a company based overseas, to prevent the transfer of assets out of the country.

³ Paragraph 7 of the High Court and County Court Jurisdiction Order 1991.

criteria before making the final decision on where a case will be heard. This decision is made by a judge, based on the following criteria:

- (a) the value of the claim;
- (b) whether the action is otherwise important and, in particular, whether it raises questions of general public interest;
- (c) the complexity of the facts, legal issues, remedies or procedures involved; and
- (d) whether transfer is likely to result in quicker case resolution (although this alone would be insufficient grounds for transfer).

1.9 Court users are not charged fees for any hearing relating to the decision of whether a case should be transferred. However, if a claimant or defendant wishes to challenge the decision to allocate a case to a particular tier of court once judicial discretion has been applied, a £40 fee would apply. Once a case is at court, there is no difference in the court fees charged for the cases in question, whether the case is heard in the High Court or in the County Court.

Sir Henry Brooke report and subsequent Government consultation

1.10 In January 2008 the Judicial Executive Board (JEB) chaired by the Lord Chief Justice commissioned Sir Henry Brooke, a retired Lord Justice of Appeal, to conduct an inquiry into the question of civil court unification (merging the High Court and County Court into a single civil court). In August 2008, Sir Henry Brooke published his report, after extensive consultation with the Judiciary, and HMCTS staff.

1.11 The report did not recommend civil court unification, and instead made a number of recommendations to improve the administration of civil justice and provide a more efficient use of judicial resources. The Judicial Executive Board, after a further round of consultation, accepted these recommendations, which included:

- Increasing the equity jurisdiction of the County Court from £30,000 to £350,000.
- Increasing the financial limit below which claims may not be commenced in the High Court from £25,000 to £100,000.
- Extending the power of issuing freezing orders to the County Court.
- Giving the High Court exclusive jurisdiction for specialist proceedings.

1.12 As these recommendations require legislation to implement, they were passed on to the Government. After consideration, the Government proposed to implement the recommendations, subject to the outcome of a full public consultation.

1.13 The MOJ consultation entitled *Solving disputes in the County Court: creating a simpler, quicker and more proportionate system: A consultation on reforming civil justice in England and Wales*⁴ was published on 29 March 2011 and the consultation period ran to 30 June 2011. The exercise received 319 responses and a majority of those who chose to answer the questions in relation to the policy measures set out in this Impact Assessment supported the proposals. The proposals are described briefly below, as are the views collected by Sir Henry Brooke, plus the responses to the Government consultation.

Increasing the equity jurisdiction of the County Court

1.14 The equity jurisdiction covers a range of cases including the administration of the estate of a deceased person, execution or declaration of Trust, and the foreclosure or redemption of mortgages (see Annex 1 for the full definition). Currently, claims below £30,000 are typically issued in the County Court, and cases with value above £30,000 are issued in the Chancery Division of the High Court. The judicial discretion outlined above then applies at the case allocation stage, with a judge in the relevant court making a decision on where the case should be heard.

⁴ www.justice.gov.uk/consultations/consultation-cp6-2011.htm

- 1.15 The £30,000 limit was last set in 1981. Sir Henry Brooke recommended removing the limit entirely in Chancery and contentious probate matters, or to raise the limit by 'a large amount'. This view was supported by senior judges who supported either an increase to the Inheritance Tax threshold, which at the time stood at £312,000, or for an unlimited County Court jurisdiction in equity and other Chancery proceedings on the basis that judicial discretion would still determine in which court the case would go for trial.
- 1.16 The MoJ consultation paper posed two questions in relation to the equity jurisdiction. The first asked: "*Do you agree that the current financial limit of £30,000 for County Court equity jurisdiction is too low? If not, please explain why.*" A total of 122 respondents answered this question, of which 109 respondents (89%) agreed that the current equity limit is too low, and 13 respondents (11%) disagreed.
- 1.17 A large majority of the 109 respondents in favour of an increase in the equity limit were legal practitioners. Others in favour included members of the judiciary and judicial bodies, regulatory bodies, representative bodies, businesses representative bodies, Local Authorities, Mediators and Mediation Advocates, academics, Citizens Advice Bureaus, financial organisations, members of the public, and HMCTS. The reasons given for support included that:
- County Court judges should be able to deal with cases within the proposed financial limit of £350,000: the current limit of £30,000 is too low.
 - Experience has shown that it is already commonplace for cases to be transferred back to the County Court to be dealt with even if they are over the County Court limit.
 - Transfer between courts takes time and can be costly.
 - The current financial limit has become detached from contemporary property values and has not kept pace with inflation and the rising value of properties, which has risen dramatically since the limit was last set.
- 1.18 Subsequent analysis of house prices in relation to this last point confirms that it is valid. The limit was last set in 1981, when average house prices were around £25,000⁵ and there was comparatively little variation across the country. As a result the County Courts were able to deal with most cases involving domestic property. However, by the third quarter of 2011 average house prices in the United Kingdom had risen to over £167,000.⁶ In the third quarter of 2011 the average house price in London was nearly £300,000.⁷ As a result, far fewer cases involving domestic property are now issued in the County Court despite the fact there has been no increase in the intrinsic complexity of such cases.
- 1.19 Some of the respondents against an increase in the equity limit suggested that there should be no limit at all, or that complexity rather than financial value should be the driving factor determining where a case is heard.
- 1.20 The second question in the consultation paper was: "*...do you consider that the financial limit should be increased to (i) £350,000 or (ii) some other figure (please state with reasons)?*" The question was answered by 129 respondents of whom 80 (62%) agreed with the proposed £350,000 limit. Those that did not agree proposed a wide range of other limits, from £50,000 to an unlimited amount.
- 1.21 Overall the responses to the two questions suggest that **businesses and court users are supportive of an increase in the equity jurisdiction of the County Court to £350,000, as are the judiciary and HMCTS.**

Increasing the financial limit below which claims may not be commenced in the High Court

- 1.22 The financial limit below which money claims may not be commenced in the Queen's Bench Division of the High Court was last increased in April 2009 from £15,000 to £25,000. At the time of his report (2008), based on consultation with the judiciary and HMCTS, Sir Henry Brooke

⁵ Nationwide house price index, quarter, 1981, based on average UK property

⁶ Nationwide house price in Q3 2011, based on average UK Property

⁷ Nationwide house price index, quarter 3, 2011, based on average London property

concluded that the £15,000 limit was too low and emphasised that relatively low value debt and contract claims were being commenced in the High Court in London when there was little prospect that they would be actually be heard in the High Court. While Sir Henry recommended an increase to £50,000, he suggested a much higher limit if the value of the claim was the only factor that might suggest the High Court would be appropriate.

- 1.23 Based on this recommendation, the Judicial Executive Board suggested that since the relevant limit for personal injury claims was (and is currently) already capped at £50,000, the £15,000 limit below which claims may not be commenced in the High Court should be increased to £100,000. The JEB argued that if the limit is set too low, too many cases would need to be transferred from the High Court to the County Court. If it is set too high the converse could be the case. On this basis, the working group suggested that the limit should be raised to £100,000 and reviewed regularly, with the intention of raising it further in the light of experience.
- 1.24 The MoJ consultation paper posed two questions in relation to the proposal. The first question asked: *“Do you agree that the financial limit of £25,000 below which cases cannot be started in the High Court is too low? If not, please explain why.”*
- 1.25 A total of 141 respondents answered this question, of which 98 respondents (70%) agreed that the High Court limit should be increased, and 43 (30%) respondents disagreed.
- 1.26 The majority of the 98 respondents in favour of an increase in the High Court limit were legal practitioners. Others in favour included members of the judiciary and judicial bodies, regulatory bodies, representative bodies, businesses representative bodies, Local Authorities, Mediators and Mediation Advocates, academics, Citizens Advice Bureaus, financial organisations, members of the public, and HMCTS. The reasons given for support included that:
- The financial limit is too low and that there is sufficient expertise and ability within the County Court to resolve disputes in excess of £25,000.
 - If for any reason a County Court judge feels that the case should be escalated to the High Court, then they have the discretion to do so. There is no need for a High Court judge to deal with a matter of value less than £100,000 unless it involves a particularly complex or novel point of law.
 - The current level results in non-complex cases, for example, debt and contract cases, being started in the High Court with a subsequent transfer to the County Court, creating inefficiencies.
 - An increase would promote increased use of the County Court, and ultimately lead to faster case resolution.
- 1.27 Those that disagreed with an increase to the current limit said that where a matter is of low financial value but is complex, or a matter of public interest, the High Court should have jurisdiction to deal regardless of the amounts involved. However, this reflects current practice and would continue to be the case under the proposal.
- 1.28 The second question in relation to this proposal was: *“...do you consider that the financial limit (other than personal injury claims) should be increased to (i) £100,000 or (ii) some other figure (please state with reasons)?”* This question was answered by 107 respondents of whom 72 (71%) expressed a preference for an increase to £100,000. Those that disagreed expressed a range of views, with proposed limits between £50,000 and £250,000.
- 1.29 Overall the responses to the two questions suggest that **businesses and court users are supportive of the proposal to increase the limit to £100,000, as are the judiciary and HMCTS.**

Extending the power to issue freezing orders to the County Court

- 1.30 A freezing order is a court order to freeze the assets of a person who has left the UK, or a company based outside the UK, in order to prevent assets from being taken out of the country. County Court judges do not have the power to issue freezing orders, with the exception that a mercantile judge (in London) may do so. In all other areas, if a freezing order is required in a County Court case, the freezing order application must be made at the local District Registry of the

High Court⁸ or to the Royal Courts of Justice, even though the case itself is being heard in the County Court. The implication of this position is that claimants have to apply to the Mercantile Courts or the Chancery Division of the High Court for pre-judgment freezing orders.

- 1.31 Sir Henry Brooke recommended that the ability to grant freezing orders should be extended to the County Court. However, in order to provide safeguards for defendants, he suggested that the jurisdiction should only be made available to senior and specially trained Circuit Judges, authorised by the Lord Chief Justice. The Judicial Executive Board accepted this recommendation.
- 1.32 The MoJ consultation paper asked: *“Do you agree that the power to grant freezing orders should be extended to suitably qualified Circuit Judges sitting in the County Court? If not, please explain why.”* A total of 120 respondents answered this question, of which 108 respondents (90%) agreed and 12 respondents (10%) disagreed.
- 1.33 The majority of the 120 respondents in favour of extending freezing orders were legal practitioners. Others in favour included members of the judiciary and judicial bodies, regulatory bodies, representative bodies, businesses representative bodies, Local Authorities, Mediators and Mediation Advocates, academics, Citizens Advice Bureaus, financial organisations, members of the public, and HMCTS. The reasons given for support included that:
- County Court Circuit Judges can handle applications for freezing orders but only suitably experienced and qualified Circuit Judges of the County Court should be given the jurisdiction.
 - The proposal is overdue and would save time in the High Court, allowing High Court judges to deal with more complex cases.
 - Many Circuit Judges who sit as Deputy High Court judges are familiar with freezing orders which are not complex applications that warrant a hearing by a High Court judge.
 - The current position is disproportionate and unnecessary.
 - Having to apply to the High Court often many miles away or in London can be wasteful in cost and time. There is no reason for a circuit judge not to deal with freezing orders.
- 1.34 Of those that disagreed, some respondents argued that the nature of freezing orders meant the expertise of a High Court Judge was in fact needed, and that they should be dealt with very carefully and with the highest levels of experience and expertise.
- 1.35 Overall the responses to the question suggest that **businesses and court users are supportive of the proposed measure to extend freezing orders to suitably qualified Circuit Judges in the County Court, as are the judiciary and HMCTS.**

Giving the High Court exclusive jurisdiction for specialist proceedings

- 1.36 Specialist claims relate to complex issues such as claims under trust law and companies' law, and often raise difficult questions and points of law. Such claims could relate to the way in which companies are structured, schemes of arrangement, reduction of capital, insurance transfer schemes, and cross border mergers. Importantly, such cases require specialist legal knowledge and so are usually handled by specialist practitioners, and heard by judges of the Chancery Division of the High Court, due to their expertise and familiarity with the relevant areas of law.
- 1.37 Current practice is that such cases are typically issued in the High Court and when they are issued in the County Court, they are typically transferred to the High Court for trial due to the complex and technical nature of such claims. If the financial limits are increased as proposed above, this could allow a greater number of these specialist claims (with value below £100,000) to be commenced in the County Court. This would result in unnecessary cost, given the case would subsequently have to be transferred to the High Court.
- 1.38 Sir Henry Brooke suggested that specialist claims should only be issued in the High Court, with the High Court given the discretion to transfer cases to the County Court if considered appropriate,

⁸ A local District Registry is part of the High Court situated in various districts of England and Wales dealing with High Court family and civil business. District Registries are often co-located at County Court.

rather than the County Court having the discretion to transfer cases to the High Court. The Judicial Executive Board accepted this recommendation.

- 1.39 The MoJ consultation paper asked: *“Do you agree that claims for variation of trusts and certain claims under the Companies Act and other specialist legislation, such as schemes of arrangement, reductions of capital, insurance transfer schemes and cross-border mergers [specialist proceedings], should come under the exclusive jurisdiction of the High Court? If not, please explain why”*. A total of 85 respondents answered this question, of which 76 respondents (89%) agreed and 9 respondents (11%) disagreed.
- 1.40 A large majority of the 76 respondents in favour of the proposal were legal practitioners. Others in favour included members of the judiciary and judicial bodies, regulatory bodies, representative bodies, businesses representative bodies, Local Authorities, Mediators and Mediation Advocates, academics, Citizens Advice Bureaus, financial organisations, members of the public, HM Revenue and Customs and HMCTS. The reasons given for support included that:
- These are complicated matters that should be dealt with by the High Court.
 - There is no sense in claims being issued in the County Court if they are almost inevitably going to be transferred to the High Court for case management and trial.
 - Given that the body of expertise for dealing with such claims exists almost exclusively within the High Court, it makes sense that these claims are dealt with there.
 - These cases are highly specialist and so require specialist judges. High Court judges will normally have the requisite experience for such cases. They also have the power to transfer appropriate cases to the County Court where necessary.
- 1.41 Of those that disagreed, some respondents said that:
- The proposal may result in increased waiting times.
 - There would be no need to make the changes as long as there are suitably trained and qualified specialist judges at the County Court.
 - The proposal would result in longer travel times as High Courts are further away.
- 1.42 Overall the responses suggest that **businesses and court users are supportive of the proposed measure to confer exclusive jurisdiction in some specialist proceedings** on the High Court.

Problem under consideration

- 1.43 Two proposals relate to changing the financial limits which determine whether cases are issued in the County Court or High Court. After issue, judicial discretion applies to ensure cases are heard at the appropriate court tier. The aim of the financial limits is to ensure that cases are issued in the appropriate court in order to minimise the number of transfers between courts following judicial discretion, and to ensure cases are best managed, tried and enforced using a level of resources appropriate to the value and weight of the case. The financial limits have not been revised for some time. This has resulted in a number of cases being issued at the High Court, which are subsequently transferred to the County Court. Revising the limits would reduce the number of case transfers, which should free up court and judicial resources in the High Court, and benefit court users.
- 1.44 Another proposal relates to freezing orders, which can currently only be granted in the High Court (or by a mercantile judge in London). It may be appropriate for cases that require a freezing order to be issued and heard in the County Court. If so, court users must endure delays and possibly additional legal costs as a freezing order application must be made at the local District Registry of the High Court or at the Royal Courts of Justice, even though the rest of the case is heard in the County Court. It is considered that suitably qualified judges in the County Court are able to make appropriate decisions relating to freezing order applications. The current rules are therefore considered to generate inefficiency, leading to delays and costs for court users, and use court and judicial resources that could more productively be used elsewhere.

- 1.45 Finally, there are a number of specialist cases that require the expertise of the High Court. Based on the current financial limits, the vast majority of these cases are currently issued in the High Court, and the majority of specialist cases that are issued in the County Court are transferred to the High Court after issue on the grounds of complexity. As outlined above, this is considered inefficient. There is also a risk that if the financial limits are increased as proposed, the number of specialist cases issued in the County Court could increase, as many may have values above the current limits, but below the proposed limits. This would increase the volume of specialist cases transferred to the High Court, which would in part offset the benefits of the financial limit proposals.
- 1.46 Government intervention is required for all the proposals considered as the changes can only be made via legislation.

Economic rationale

- 1.47 The conventional economic approach to government intervention to resolve a problem is based on efficiency or equity arguments. The Government may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or if there are strong enough failures in existing government interventions (e.g. waste generated by misdirected rules). In both cases the proposed new intervention itself should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and re-distributional reasons (e.g. to reallocate goods and services to the more needy groups in society).
- 1.48 The rationale for intervention in this case is to improve the efficiency of the court system by rebalancing the jurisdictions in the civil courts between the High Court and the County Court. The current financial limits that determine where a case is issued have fallen in real terms since they were last set, which has led to relatively low value cases being issued in the High Court, only to be subsequently transferred to the County Court. Increasing the limits should mean those cases are issued in the County Court, reducing the volume of transfers and providing efficiency benefits as fewer court and judicial resources will be used to allocate cases to the appropriate tier of court. This is based on the assumption that the proposals would lead to a net reduction in transfers.
- 1.49 A similar rationale applies to the proposal to allow County Court judges to make decisions relating to freezing order applications. In this case, the proposal should provide efficiency benefits as County Court cases requiring a freezing order would no longer be required to make an application at the High Court, and could instead do this in the County Court, which is considered more efficient. This rationale hinges on the assumption that suitably qualified County Court judges are to make decisions relating to freezing order applications, and that there would be no resulting impact on case outcomes.
- 1.50 The proposal to ensure specialist cases are issued in the High Court would also be justified on efficiency grounds. This proposal would also seek to reduce costs associated with transfers, this time from the County Court to the High Court. These costs might increase in future if the financial limit proposals are implemented.
- 1.51 The proposals are expected to lead to a more efficient use of court and judicial resources, which may lead to reduced waiting times across the civil courts. Any reduction in waiting times may generate further equity (fairness) benefits, if quicker case resolution were seen as socially beneficial.

Affected stakeholder groups, organisations and sectors

- 1.52 The proposals are expected to affect the following groups:
- *Claimants*: claimants will be required to proceed under the new processes.
 - *Defendants*: similarly, defendants will be required to proceed under the new processes.
 - *Legal professionals*: the changes will affect legal service providers dealing with cases that fall within scope of these proposals.
 - *Her Majesty's Courts and Tribunal Service (HMCTS)*: HMCTS case allocation should improve as a result of the proposal.

- *The Judiciary*: the proposals should result in a more efficient use of judicial resources.

2. Costs and benefits

- 2.1 This Impact Assessment identifies impacts on individuals, groups and businesses in the UK, with the aim of understanding what the overall impact to society might be from implementing these options. The costs and benefits of each option are compared to the do nothing option. Impact Assessments place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However there are important aspects that cannot sensibly be monetised. These might include how the proposal impacts differently on particular groups of society or changes in equity and fairness, either positive or negative.
- 2.2 Parts a, b and c of Option 1 have been assessed together as the impacts of the three proposals are similar (relating to moving court and judicial work from the High Court to the County Court). Part d is assessed separately.

Option 0: Base case (do nothing)

Description

- 2.3 Under the do nothing option, the current limit for equity jurisdiction in the County Court would remain at £30,000, as last set in 1981. Equity claims above this limit would be issued in the High Court, and potentially require subsequent transfer to the County Court. In 2010 approximately 35,000 proceedings including equity and other cases were issued in the Chancery Division of the High Court, and approximately 1.6 million civil claims were issued in the County Court, of which approximately 300,000 were defended.⁹
- 2.4 The limit below which cases relating to money claims may not be issued in the Queen's Bench Division of the High Court would remain at £25,000. This limit was last set in 2009. In 2010 approximately 17,000 proceedings were started in the Queen's Bench Division of the High Court. A number of cases would continue to be issued in the High Court, and require subsequent transfer to the County Court.
- 2.5 It would remain the case that freezing orders could not be granted in the County Court (apart from by a Mercantile judge in London). A freezing order application would need to be made in the local District Registry of the High Court or the RCJ, even if the case was being heard in the County Court.
- 2.6 Specialist claims that come under the Companies Act would continue to be issued in the County Court. The majority of these cases would require subsequent transfer to the High Court, based on case complexity.
- 2.7 Because the do-nothing option is compared against itself its costs and benefits are necessarily zero, as is its Net Present Value (NPV).

Option 1a: Increase the equity jurisdiction of the County Court to £350,000

Option 1b: Increase the financial limit below which cases relating to money claims may not be commenced in the High Court (with the exception of complex personal injury claims) to £100,000

Option 1c: Extend the power to issue freezing orders to the County Court

⁹ The County Court also deal with some family cases. These are not discussed in this impact assessment as they will not be affected by the proposal.

Description

Option 1a: Increase the equity jurisdiction of the County Court to £350,000

- 2.8 Under Option 1a, the limit for equity jurisdiction in the County Court would increase from £30,000 to £350,000. As a result, equity cases with value between £30,000 and £350,000 will in future be issued in the County Court, rather than the High Court.
- 2.9 Equity claims above the current limit are dealt with in the Chancery Division of the High Court which is divided into the Royal Courts of Justice (RCJ) in London and eight District Registries across the country. Table 1 illustrates the number of claims and originating proceedings of the RCJ and the number of claims issued in the District Registries. In 2010, around 420 cases fell under the jurisdiction of equity in the RCJ (see Annex 1 for a full definition of equity) out of a total of 4,810 cases, equivalent to around 10%.

Table 1. Claims and originating proceedings issued in the Chancery Division of the High Court, 2006-2010

Proceedings	Number of cases				
	2006	2007	2008	2009	2010 ¹
Royal Courts of Justice (RCJ)					
Equity cases	60	149	306	807	422
Other cases	4,468	3,385	3,473	4,080	4,388
Total (equity and other cases)	4,528	3,534	3,779	4,887	4,810
<i>Equity cases as a percentage of Chancery Division claims and originating proceedings</i>	1%	4%	8%	17%	9%
District Registries					
Total (equity and other cases, £25,000 and over)					292
Estimated volume of equity claims and originating proceedings					26
Total equity cases (RCJ and District Registries)					448

Source:

Table 5.3 Judicial and Court Statistics 2010 (Chancery chambers, bespoke contribution for the publication), extract from HMCTS CaseMan System (administration data collection system)

Notes:

¹ With effect from 2010 the Chancery Division improved the way all claims were recorded. As a result, figures for 2010 are not directly comparable with those for previous years

- 2.10 In 2010 a total of around 290 claims valued over £25,000 were also issued in the District Registries of the Chancery Division. We do not hold data on the number of claims issued in the District Registries that fall under the jurisdiction of equity, but based on the proportion of RCJ cases that relate to equity, if we assume that around 10% of District Registry cases are equity cases with value above £30,000, then around an additional 30 equity cases in the District Registries may be affected by the proposal. In total, the proposal may affect up to around 500 cases.
- 2.11 Unfortunately we do not collect data on the value of equity cases at a further disaggregated level, and can therefore only provide a range estimate of the number of cases that would actually be issued in the County Court in future, given only those with value less than £350,000 would do so. This would range from zero cases a year (if all 500 identified cases had value above £350,000) to 500 (if all identified cases had value below £350,000). As we have no information on the distribution of equity case values, we have taken the mid-point of 250 cases as our central estimate for the number of cases issued in the County Court in future. Around 250 cases would represent around 0.5% of all cases currently issued in the High Court¹⁰ and around 0.02% of all cases currently issued in the County Court.
- 2.12 The proposal aims to reduce the number of transfers between courts. However, of the 250 cases that would now issue in the County Court, some may be complex enough to warrant transfer to the High Court. Unfortunately, we have no information on the number of transfers that are currently made. While such data is unavailable, responses from the consultation and discussions with the

¹⁰ In 2010 approximately 36,600 cases started in the Chancery Division and 16,600 in the Queens Bench Division, equating to a total of approximately 53,200 cases starting in the High Court.

judiciary suggest that around 70% of the relevant equity cases currently issued in the High Court may be transferred to the County Court.

- 2.13 On this basis, in the future 70% of the identified cases would no longer require a transfer from the High Court to the County Court. However, the remaining 30% of cases would now require a transfer from the County Court to the High Court. It follows that the *net* reduction in transfers will be 40%. This assumes that changing the court at which judicial discretion applies would have no impact on the allocation decisions made i.e. that while the proposal will change where cases are issued, it will have no impact on where cases are heard.
- 2.14 As set out above, we believe that up to 500 equity cases would be issued in the County Court as a result of the proposal, with a central estimate of 250. Based on the assumptions adopted, this would equate to a reduction of up to 200 transfers, with a central estimate of 100 fewer transfers.
- 2.15 In summary, we expect around 100 fewer transfers per year as a result of the proposal. The proposal has been the subject of multiple consultations in recent years, and as set out in detail above is strongly supported by all affected parties, including court users, the judiciary and HMCTS. On this basis, we propose to revise the limit to £350,000.

Option 1b: Increase the financial limit below which claims may not be issued in the Queen’s Bench Division of the High Court (with the exception of complex personal injury claims)

- 2.16 Under Option 1b, the limit below which cases relating to money claims cannot be issued in the Queen’s Bench Division of the High Court would be increased from £25,000 to £100,000. The rationale for this increase is that, despite a previous increase from £15,000 in 2009, cases are still issued in the High Court and transferred back to the County Court. The proposal would result in money cases with value between £25,000 and £100,000 being issued in the County Court rather than the High Court.
- 2.17 We do not collect data on the specific value of money claims in the Queens’ Bench Division of the High Court, but we do have figures for specified money claims grouped into those above and below £50,000. As set out in table 2 below, figures from the RCJ in 2010 indicate that around 1,000 claims were below £50,000, and around 1,500 were above £50,000.
- 2.18 HMCTS administrative data indicates that in the District Registries in 2010, around 200 specified money claims had a value of between £25,000 and £50,000, and around 450 cases had a value over £50,000.

Table 2. Specified money claim proceedings started in the Queen's Bench Division of the High Court, by value of claim, 2010

	Number of claims		
	Value of claim		Total
	£25,000- £50,000	Over £50,000	
Royal Courts of Justice	1,082	1,647	2,729
District Registries	195	447	642
Total	1,277	2,094	3,371

Sources: Table 6.2 Judicial and Court Statistics 2010, extract from HMCTS CaseMan System (administration data collection system)

- 2.19 We do not collect more detailed data on the value of Queen’s Bench Division cases. Table 2 suggests that around 1,300 cases (with value between £25,000 and £50,000) would definitely be issued in the County Court in future under the proposed £100,000 limit. This is the estimated lower range of the volume of cases moving to the County Court as a result of the proposal (which would occur if all cases with value greater than £50,000 had a value greater than £100,000).
- 2.20 Table 2 also shows that a maximum of around 3,400 cases would be issued in the County Court as a result of the proposal if all cases with value above £50,000 had a value less than £100,000. As

we have no further information on the distribution of case values, as the central estimate we have taken the mid-point of this range: around 2,400 cases issued in the County Court as a result of the proposal. This would represent around 4.4% of all cases issued in the High Court, and around 0.1% of cases issued in the County Court.

- 2.21 While these estimates relate to specified money claims started in the Queen's Bench Division of the High Court, this court also has responsibility for unspecified money claims. Given these claims do not have a value at allocation, we do not have data on the number that would fall within the scope of this proposal. The majority of such claims are for personal injury, which are exempt from this proposal. However, there is a risk that some unspecified claims (which are neither for personal injury or clinical negligence) may fall within the scope of this proposal, increasing the volume of cases that will in the future be issued in the County Court. This is presented as a risk only.
- 2.22 As for Option 1a, the proposal aims to reduce the volume of transfers between the High Court and County Court. Assuming 70% of the claims issued in the County Court as a result of the proposal are currently transferred to the County Court after issue in the High Court, this would lead to a 40% net reduction of transfers (as in future 30% of cases will require transfer from the County Court to the High Court). Again, this assumes the proposal will have no impact on where cases are heard.
- 2.23 As set out above, we estimate that between around 1,300 and 3,400 cases would be issued in the County Court as a result of the proposal, with a central estimate of around 2,400 cases. Therefore, the proposal is expected to reduce the number of transfers by between around 500 and 1,400, with a central estimate of around 900 fewer transfers.
- 2.24 In summary, we expect around 1,300 cases per year to be issued in the County Court, and for the number of transfers required to fall by around 900. The proposal has been the subject of multiple consultations in recent years, and as set out in detail above is supported by all affected parties, including court users, the judiciary and HMCTS. On this basis, we propose to revise the limit to £100,000.

Option 1c: Extend the power to issue freezing orders to the County Court

- 2.25 Under Option 1c, the power to grant freezing orders would be extended to judges in the County Court. A freezing order is a court order to freeze the assets of a defendant or of a person or of a company based overseas to prevent the assets being taken out of the country. Currently, freezing orders can only be granted in the High Court. In order to ensure that freezing orders are appropriately issued in the County Court, only specially trained Circuit judges in the County Court will be given the ability to grant freezing orders.
- 2.26 The number of freezing orders applied for or granted each year is very small. Unfortunately, no data is collected relating to the number of freezing orders requested in the High Court overall. However, we do know that 18 freezing orders were granted in the district registries of the High Court in 2010, over which time the district registries accounted for around 70% of all Queens Bench division proceedings started in the High Court.¹¹ Assuming the proportion of cases granted a freezing order in the district registries is representative of the High Court overall, this suggests around 25 freezing orders may have been granted in total in 2010.
- 2.27 The proposal relates to allowing County Court judges to make *decisions* relating to freezing orders. We do not hold information on the proportion of requests for a freezing order that are successful, but assuming 50% of such requests are granted, this suggests around 50 freezing orders are requested per year, based on 2010 data. However, the proposal would only actually move a freezing order request when the case itself is being heard in the County Court (as requests in cases that are being heard in the High Court will continue to be made and heard in the High Court). This suggests the actual number of freezing order requests that will move to the County Court as a result of the proposal would be less than 50.
- 2.28 As a high estimate, we assume 50 freezing order applications would now be heard in the County Court compared to the High Court. As a low estimate, we assume no applications would move to

¹¹ While freezing orders could in principle be applied for in any case, we believe they are more likely to be applied for in Queens Bench division cases, and have therefore used Queens Bench figures in this calculation.

the County Court, which is equivalent to assuming that all freezing orders in 2010 related to cases being heard in the High Court. As we have no information relating to which of these scenarios is more likely, as our central estimate we have taken the mid-point, and assumed that around 25 freezing order applications would move to the County Court as a result of the proposal.

2.29 In summary, we estimate that around 25 County Court cases per year would no longer need to apply to the High Court for a freezing order, and could instead make the application in the County Court. Consultation responses indicate the majority of respondents support the proposal, and on this basis we propose to allow suitably qualified County Court judges to make decisions relating to freezing order applications.

Overall summary

2.30 Table 3 summarises the estimates presented above.

Table 3. Estimated impact of proposals 1a, 1b and 1c

	Minimum	Mid point	Maximum
Estimated volume of cases affected by proposals			
Proposal 1a (Chancery Division)	0	250	500
Proposal 1b (Queens Bench Division)	1,300	2,350	3,400
Proposal 1c	0	25	50
Total	1,300	2,625	3,950
As a percentage of all proceedings started in the High Court	2.4%	4.9%	7.4%
As a percentage of all proceedings started in the County Court	0.1%	0.2%	0.2%
Net reduction in transfers			
Proposal 1a (Chancery Division)	0	100	200
Proposal 1b (Queens Bench Division)	500	900	1,400
Total	500	1,000	1,600

Costs

2.31 It is anticipated that there would be some minor one off transition costs associated with familiarisation for legal professionals and court staff as a result of this proposal.

Court users

2.32 We estimate that raising the financial limits would result in around 2,600 cases being issued in the County Court rather than the High Court. This would lead to around 1,000 fewer net transfers between the High Court and the County Court in our central estimate, assuming that the same judicial discretion will apply at the High Court and County Court (that the proposal would not affect where cases are heard).

2.33 However, despite the net reduction in transfers overall, as a result of the proposal around 800 cases will now require a transfer to the High Court. This will impose some minor costs on court users in these cases, largely relating to increased waiting time. Transfers based on the application of judicial discretion do not involve financial cost for court users, but can add around 15 days to the time taken for the case to move from issue to a hearing. In aggregate, the proposal is expected to reduce the volume of transfers.

2.34 Since more cases are being issued in the County Court under the proposal, there may be longer waiting times in the County Court for all County Court users. Waiting times vary between courts and case types but in 2010 in the County Court there was an estimated 31 weeks between issue and the start of the claim for small claims cases and 21 weeks for fast and multi track cases (specified money claims other than small claims).¹² We do not expect the impact on waiting times to be significant, as the additional volume of cases issued in the County Court is small, relative to current workload.

¹² Data is based on a sample, MOJ Judicial and Court Statistics 2010.

- 2.35 Similarly, allowing freezing order requests to be heard at the County Court is likely to increase County Court workload, which again may also have an impact on waiting times. Freezing order applications typically involve a small amount of judicial resource, and orders can take around one hour of court staff time to draft. Due to the volume of cases involved, any resulting impact on HMCTS waiting times is expected to be minor.
- 2.36 It is assumed that the same judicial discretion in relation to case allocation (decisions relating to possible transfer) applies at the County Court and High Court. On this basis, the proposal is assumed not to affect the court at which a case is heard, and not to affect case outcomes. In relation to freezing orders, it is assumed that outcomes would be unaffected, as only suitably qualified County Court judges will be able to make decisions relating to freezing orders. Therefore, there should be no impact on court user perception of the fairness of case outcomes.

HMCTS

- 2.37 There are likely to be some one-off costs for HMCTS associated with changing case allocation and transfer processes. This may involve changing the current allocation and case transfer rules and providing training for court staff. These costs are not expected to be significant. It is assumed that the same level of judicial discretion in relation to case allocation (to the appropriate court) applies at the County Court and High Court, and that there is no difference in the cost of applying this discretion. There is no difference in court fees between the High Court and County Court for the cases in question.
- 2.38 In relation to freezing orders, HMCTS may incur some additional training costs for Circuit judges. However, it is intended that training in issuing freezing orders will be incorporated into standard refresher training, meaning these costs are not expected to be significant.

Legal service providers

- 2.39 The financial limit increases are only expected to have an impact on the volume of transfers, not where cases are heard, nor the amount of legal resources required per case in relation to hearings. The transfer decisions in question require no legal involvement. However, the proposal may result in a minor reduction in waiting times. If longer waiting times are associated with higher legal costs, legal service providers may face a lower demand for their services in aggregate as a result of the proposal. It is not possible to quantify this impact because legal fees are specific to each case and are commercially sensitive.
- 2.40 Extending the power to issue freezing orders to the High Court may reduce the demand for legal services as a freezing order application can currently only be made in the High Court. For those cases being heard in the County Court, this is likely involve additional travel for legal service providers, which is likely to be associated with additional legal cost. The proposal will result in these costs no longer being generated, which would represent a reduction in income for legal service providers. As above, it is not possible to quantify this impact because legal fees are specific to each case and are commercially sensitive. The location of court users and their legal representatives to the High Court it is also unknown.
- 2.41 In general, any legal costs generated are assumed to be passed on to court users. Therefore, the proposal is expected to have a neutral impact on legal service providers.

Wider social and economic costs

- 2.42 Wider social and economic costs are not anticipated given the assumptions adopted, in particular that case outcomes would remain the same, and that efficiencies may be reaped. The assumptions section considers this in more detail.

Benefits

Court users

- 2.43 We estimate that raising the financial limits would result in around 2,600 cases being issued in the County Court rather than the High Court. This would lead to around 1,000 fewer transfers between

the High Court and the County Court, assuming that the same judicial discretion will apply at the High Court and County Court (that the proposal would not affect where cases are heard). For court users whose case does not now require a transfer to the County Court (estimated to be around 1,800 cases), the proposal will therefore generate some minor benefits relating to reduced waiting times.

- 2.44 Transfers based on the application of judicial discretion do not involve financial cost for court users, but can add around 15 days to the time taken for the case to move from issue to a hearing. Given the expected reduction in transfers, the aggregate impact is not expected to be significant.
- 2.45 Since fewer cases are being issued in the High Court under the proposal, there may be shorter waiting times at the High Court for all High Court users. Waiting times at the RCJ from issue to trial in 2010 was approximately 37 weeks, and in the District Registries the average waiting time from issue to trial was around 75 weeks (61 weeks in the Chancery Division, 87 weeks in the Queen's Bench). We do not expect the impact on waiting times to be significant, as the reduced volume of cases issued in the High Court is small, relative to current workload.
- 2.46 Similarly, allowing freezing order requests to be heard at the County Court is likely to reduce High Court workload, which again may also have an impact on High Court waiting times. Given a freezing order application may take one hour of administrative time, and a small amount of judicial time, the volume of work associated with around 25 freezing order applications expected to be removed from the High Court is very small, and any resulting impact on High Court waiting times is expected to be negligible.
- 2.47 As outlined above, allowing freezing order applications to be made at the County Court may also result in a net reduction in legal fees. Court users themselves can attend freezing order application hearings, and the proposal may therefore directly reduce travel costs for court users, as well as reducing legal fees. Due to the volume of cases involved, any aggregate impact is expected to be minor.
- 2.48 As outlined in the costs section above, based on the assumptions adopted there should be no impact on court user perception of the fairness of case outcomes.

HMCTS

- 2.49 Case transfers require some HMCTS administrative input, estimated at around twenty minutes in total per transfer. This relates to physically transferring case files from one court to another. There are also transport costs relating to the physical transfer. Around 1,000 fewer transfers would therefore generate some administrative savings for HMCTS, although these savings are expected to be minor, and have been scored as negligible.
- 2.50 There may also be some additional efficiency benefits from extending the power to grant freezing orders to the County Court as cases in the County Court will no longer need to make freezing order applications in the High Court, before returning to the County Court for the remainder of the case. However, as the same application process is assumed to apply, take the same time and reach the same outcomes on average, any efficiency savings relating for HMCTS are not expected to be significant.
- 2.51 The total level of County Court and High Court resources is not expected to change as a result of the proposal. Rather, any efficiency savings would be used to reduce waiting times and lower fees for court users. HMCTS court fees are set to cover costs. However, given the efficiency savings identified are expected to be negligible, the proposal is not expected to have a significant impact on HMCTS costs or fees.

Legal service providers

- 2.52 As outlined above, any legal costs generated are assumed to be passed on to court users. Therefore, the proposal is expected to have a neutral impact on legal service providers.

Equity (fairness)

2.53 Quicker payment and quicker case resolution might be associated with increased equity.

Wider social and economic benefits

2.54 The proposals would be associated with increased resource efficiency, given the assumptions applied. We expect this benefit to be small.

Option 1d: Remove certain types of specialist proceedings from the jurisdiction of County Court

Description

2.55 The proposal would give the High Court exclusive jurisdiction for complex specialist claims (complex proceedings other than money claims) which fall under the Companies Act. At present the High Court and County Court both have jurisdiction to hear these cases. This would have the effect of ensuring cases that are currently issued in the County Court are issued in the High Court.

2.56 Due to the nature of specialist cases, those issued in the County Court are usually transferred to the High Court for hearing on the grounds of complexity. By ensuring specialist cases are issued in the High Court, the proposal would reduce the number of case transfers required from the County Court to the High Court, which should generate efficiency savings and benefit court users.

2.57 Information on the number of specialist cases issued in the County Court or the High Court is not collected centrally. However, we do hold data on the total number of claims issued in the District Registries of the Chancery Division: any specialist cases issued in the County Court will be captured by this data. As indicated in table 2 above, there were 292 claims in the District Registries of the Chancery Division in 2010, of which we believe around 26 may have been equity cases. In the absence of further information, we therefore estimate the number of specialist cases affected to be between around zero and 250, with a mid-point estimate of around 125. A more accurate estimate would require the manual inspection of case files, which is not considered proportionate.

2.58 We believe that the vast majority of specialist cases currently issued in the County Court are subsequently transferred to the High Court, in part based on the views expressed in consultation responses. On this basis, we have assumed that 95% of specialist cases issued in the County Court are subsequently transferred to the High Court.

2.59 It is assumed that the same judicial discretion in relation to case allocation (to the appropriate court) applies at the County Court and High Court. On this basis, the proposal is assumed not to affect the court at which a case is heard. The proposal would lead to a net reduction in transfers of around 90% of the relevant specialist cases. Of the around 125 specialist cases that will be issued in the High Court as a result of the proposal, around 120 would no longer require transfer to the High Court, but around 5 would now require transfer from the High Court to the County Court. This would lead to a net reduction of around 115 transfers.

2.60 If the proposals to increase the financial limits are implemented, this may lead to a greater number of complex specialist cases being issued in the County Court based on financial value, which will subsequently need to be transferred to the High Court. The proposal also therefore seeks to counteract an unintended consequence of the other proposals being considered. We do not know how many specialist cases would fall within the revised financial limit of the County Court: this is presented as a risk only. None of these cases are currently assumed to be transferred to the County Court.

2.61 In summary, we expect around 125 cases per year to be issued in the High Court rather than the County Court, and for the number of transfers required between courts to fall by around 115. This number would increase if the financial limits are increased as proposed. The proposal has been the subject of multiple consultations in recent years, and as set out in detail above is strongly supported by all affected parties, including court users, the judiciary and HMCTS. On this basis, we propose to grant the High Court exclusive jurisdiction over specialist cases.

Costs

Court users

- 2.62 We estimate that the proposal would result in around 125 cases being issued in the High Court rather than the County Court. This would lead to around 115 fewer transfers between the High Court and the County Court, assuming that the proposal would not affect where cases are heard.
- 2.63 However, despite the net reduction in transfers overall, as a result of the proposal around 5 cases will now require a transfer to the County Court. This will impose some minor costs on court users in these cases, largely relating to increased waiting time. Transfers based on the application of judicial discretion do not involve financial cost for court users, but can add around 15 days to the time taken for the case to move from issue to a hearing. In aggregate, the proposal is expected to reduce the volume of transfers.
- 2.64 Since more cases are being issued in the High Court under the proposal, there may be longer waiting times in the High Court for all High Court users. Waiting times at the RCJ from issue to trial in 2010 was approximately 37 weeks, and in the District Registries the average waiting time from issue to trial was around 75 weeks (61 weeks in the Chancery Division, 87 weeks in the Queen's Bench). We do not expect the impact on waiting times to be significant, as the additional volume of cases issued in the High Court is small, relative to current workload.
- 2.65 It is assumed that the same judicial discretion in relation to case allocation (decisions relating to possible transfer) applies at the County Court and High Court. On this basis, the proposal is assumed not to affect the court at which a case is heard, and not to affect case outcomes. Therefore, there should be no impact on court user perception of the fairness of case outcomes.

HMCTS

- 2.66 There are likely to be some one-off costs for HMCTS associated with changing case allocation and transfer processes. This may involve changing the current allocation and case transfer rules and providing training for court staff. These costs are not expected to be significant. It is assumed that the same level of judicial discretion in relation to case allocation (to the appropriate court) applies at the County Court and High Court, and that there is no difference in the cost of applying this discretion. There is no difference in court fees between the High Court and County Court for the cases in question.

Legal service providers

- 2.67 The proposal is only expected to have an impact on the volume of transfers, not where cases are heard, nor the amount of legal resources required per case in relation to hearings. The transfer decisions in question require no legal involvement. However, the proposal may result in a minor reduction in waiting times. If longer waiting times are associated with higher legal costs, legal service providers may face a lower demand for their services in aggregate as a result of the proposal. It is not possible to quantify this impact because legal fees are specific to each case and are commercially sensitive.
- 2.68 In general, any legal costs generated are assumed to be passed on to court users. Therefore, the proposal is expected to have a neutral impact on legal service providers.

Wider social and economic costs

- 2.69 Wider social and economic costs are not anticipated given the assumptions adopted, in particular that case outcomes would remain the same, and that efficiencies may be reaped. The assumptions section considers this in more detail.

Benefits

Court users

- 2.70 We estimate that the proposal would result in around 125 specialist cases being issued in the High Court rather than the County Court. This would lead to around 115 fewer transfers between the

High Court and the County Court, assuming that the proposal would not affect where cases are heard. This volume is likely to increase if the financial limits are increased as proposed. For court users whose case does not now require a transfer to the High Court (estimated to be around 120 cases) the proposal will therefore generate some minor benefits relating to reduced waiting times.

- 2.71 Transfers based on the application of judicial discretion do not involve financial cost for court users, but can add around 15 days to the time taken for the case to move from issue to a hearing. Given the expected reduction in transfers, the aggregate impact is not expected to be significant.
- 2.72 Since fewer cases are being issued in the County Court under the proposal, there may be shorter waiting times at the County Court for all County Court users. Waiting times vary between courts and case types but in 2010 in the County Court there was an estimated 31 weeks between issue and the start of the claim for small claims cases and 21 weeks for fast and multi track cases (specified money claims other than small claims). We do not expect the impact on waiting times to be significant, as the reduction in the volume of cases issued in the County Court is small, relative to current workload.

HMCTS

- 2.73 Case transfers require some HMCTS administrative input, estimated at around twenty minutes in total per transfer. This relates to physically transferring case files from one court to another. There are also transport costs relating to the physical transfer. Around 115 fewer transfers may therefore generate some administrative savings for HMCTS, although these savings are expected to be minor, and have been scored as negligible.
- 2.74 The total level of County Court and High Court resources is not expected to change as a result of the proposal. Rather, any efficiency savings would be used to reduce waiting times and lower fees for court users. HMCTS court fees are set to cover costs. However, given the efficiency savings identified are expected to be negligible, the proposal is not expected to have a significant impact on HMCTS costs or fees.

Legal service providers

- 2.75 As outlined above, any legal costs generated are assumed to be passed on to court users. Therefore, the proposal is expected to have a neutral impact on legal service providers.

Equity (fairness)

- 2.76 Quicker payment and quicker case resolution might be associated with increased equity.

Wider social and economic benefits

- 2.77 The proposals would be associated with increased resource efficiency, given the assumptions applied. We expect this benefit to be small.

Risks and assumptions (for all options considered)

- 2.78 The number of cases that will be affected by the proposals, and the resulting reduction in transfers is uncertain, although estimates are presented based on a number of assumptions, which are considered in detail above. In general, a greater reduction in the number of transfers required will increase the magnitude of the identified impacts.
- 2.79 In particular, it is assumed that 70% of cases issued in the County Court as a result of the proposals to increase the financial limits are currently transferred to the County Court after issue in the High Court. This leads to a net reduction in transfers of 40% (of the cases moved). Similarly, 95% of specialist cases issued in the County Court are assumed to subsequently transfer to the High Court, leading to a net reduction of 90% (of the cases moved). There is a risk that if less than 50% of the relevant volume of claims are *currently* transferred the proposals may result in a net increase in transfers, which would generate net costs rather than benefits.

- 2.80 It is assumed that unspecified money claims in the Queens' Bench Division of the High Court will be unaffected, as the majority of such claims are for personal injury, which are exempt from these proposals. However, there is a risk that some unspecified claims (which are neither for personal injury or clinical negligence) may fall within the scope of these proposals, increasing the volume of cases that will in the future be issued in the County Court. If some of these cases require a hearing in the High Court, the reduction in transfers from the proposal may be lower than anticipated.
- 2.81 The total level of County Court and High Court resources is assumed not to change as a result of the proposal. Rather, any efficiency savings would be used to reduce waiting times and lower fees for court users HMCTS court fees are set to cover costs. Based on the available information, we do not expect the identified impacts to be significant. The proposal is therefore not expected to have a significant impact on HMCTS fees. Court fees for the affected cases are the same in the High Court and County Court.
- 2.82 It is assumed that the same judicial discretion in relation to case allocation (to the appropriate court) applies at the County Court and High Court. On this basis, the proposal is assumed not to affect the court at which a case is heard, and not to affect case outcomes. Since the allocation criteria remain unchanged, we assume there would not be an increase in appeals made as a result of judicial discretion applying at a different court in future. In relation to freezing order applications, it is assumed that outcomes would be unaffected, as only suitably qualified County Court judges will be able to make decisions relating to freezing orders.
- 2.83 It is assumed that the transfer and freezing order application processes are the same at the High Court and County Court, take the same time, and involve the same level of court, judicial and legal resources.
- 2.84 It is assumed that the proposal would have no impact on the volume of cases being pursued through the civil courts overall, nor on the ability or willingness of court users to gain legal representation. It is assumed that the proposal would have no impact on the volume of freezing orders applied for and issued, although this may increase if the proposal makes it easier to apply for a freezing order. At the margin it is possible that case volumes might also increase in response to more efficient court processes.
- 2.85 It is assumed that legal service providers pass on any legal costs to court users. Therefore, the proposal is expected to have a neutral impact on legal service providers.

One In One Out Position.

- 2.86 The One-in, One-out (OIOO) rule means that no new primary or secondary UK legislation which imposes costs on business or civil society organisations can be brought in without the identification of existing regulations with an equivalent value that can be removed.
- 2.87 The proposals contained in this Impact Assessment relate to court rules and the way in which the courts allocate work. It is not possible to quantify the impact on businesses because we do not collect data on the number of litigators who are businesses. We collect information on the names of litigants but it is not clear from summary records whether that person was operating in a personal or business capacity. Therefore, impacts are presented for court users as a whole.
- 2.88 In aggregate, the proposals are expected to benefit court users (who may be businesses) relating to reduced waiting times for the cases that are issued in a different court, plus reduced travel and legal costs relating to freezing order applications. We expect the proposals to result in around 1,100 fewer case transfers between the High Court and County Court per year, plus 25 freezing order applications being made in the County Court rather than the High Court. As this is a small volume relative to current court workloads, we do not expect the identified impacts to be significant in aggregate, and have scored the impacts as negligible.
- 2.89 As set out above, legal service providers may experience a minor reduction in demand as a result of the proposals. However, any changes to legal costs are assumed to be passed on to court users in the form of legal fees, meaning the net impact on legal service providers is expected to be neutral.

2.90 In summary, these reforms are expected to reduce costs for court users and businesses, but these benefits are expected to be negligible. As we do not expect the benefits to be significant, on a conservative basis the impact for OIOO purposes has been assessed as a zero net cost.

3. Enforcement and Implementation

3.1 HMCTS will be responsible for the enforcement of these proposals.

3.2 The Ministry of Justice will be responsible for the implementation of these proposals in 2013/14.

4. Specific Impact Tests

Statutory Equality Duties

4.1 A draft Equality Impact Assessment is attached at Annex 2.

Competition assessment

4.2 These proposals are likely to impact on businesses as they are likely to be court users in the cases affected by the proposal. However, while we expect businesses to benefit as a result of the proposal, we do not expect the proposal to have a significant impact on competition. The impact on legal service providers is expected to be neutral.

Small Firms Impact Test

4.3 These proposals are likely to impact on businesses as they are likely to be court users in the cases affected by the proposal. However, while we expect businesses to benefit as a result of the proposal, we do not expect the proposal to have a significant impact, including on small firms. The impact on legal service providers is expected to be neutral.

Carbon Assessment

4.4 The proposals should reduce travel distances, given freezing order applications will be able to be made in the County Court rather than the High Court. A reduced volume of case transfers is also likely to involve lower travel relating to the physical transfer of case papers. These impacts are not expected to be significant.

Wider Environmental Impacts

4.5 As a result of travelling distances being reduced the proposals may have a small positive impact on noise pollution, air quality and other associated environmental factors. These impacts are not expected to be significant.

Health Impact Assessment

4.6 These proposals should not have a significant impact on lifestyle or health and social care services but at the margin may have a positive impact on anxiety if waiting times are reduced.

Human rights

4.7 These proposals are compliant with the Human Rights Act (1998).

Justice Impact Test

4.8 There is no expected impact on the legal aid budget and the impacts on the court system are contained in the main body of this Impact Assessment.

Rural proofing

4.9 There are no expected rural impacts as a result of the proposal.

Sustainable Development

4.10 These proposals are not expected to have a significant impact on sustainable development.

Annex 1: Definition of Equity jurisdiction as defined by the County Court Act 1984

A County Court shall have all the jurisdiction of the High Court to hear and determine—

(a) proceedings for the administration of the estate of a deceased person, where the estate does not exceed in amount or value the County Court limit;

(b) proceedings—

(i) for the execution of any trust, or

(ii) for a declaration that a trust subsists, or

(iii) under section 1 of the Variation of Trusts Act 1958,

where the estate or fund subject, or alleged to be subject, to the trust does not exceed in amount or value the County Court limit;

(c) proceedings for foreclosure or redemption of any mortgage or for enforcing any charge or lien, where the amount owing in respect of the mortgage, charge or lien does not exceed the County Court limit;

(d) proceedings for the specific performance, or for the rectification, delivery up or cancellation, or any agreement for the sale, purchase or lease of any property, where, in the case of a sale or purchase, the purchase money, or in the case of a lease, the value of the property, does not exceed the County Court limit;

(e) proceedings relating to the maintenance or advancement of a minor, where the property of the minor does not exceed in amount or value the County Court limit;

(f) proceedings for the dissolution or winding-up of any partnership (whether or not the existence of the partnership is in dispute), where the whole assets of the partnership do not exceed in amount or value the County Court limit;

(g) proceedings for relief against fraud or mistake, where the damage sustained or the estate or fund in respect of which relief is sought does not exceed in amount or value the County Court limit.