

<b>Title: Alternative Dispute Resolution proposals for civil cases</b>  <b>Lead department or agency:</b> Ministry of Justice <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>
	<b>IA No:</b> MoJ 066
	<b>Date:</b> 29 March 2011
	<b>Stage:</b> Consultation
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Secondary legislation (options 1 to 4), Primary legislation for option 5.
<b>Contact for enquiries:</b> Ramesh Rajagopal	

## Summary: Intervention and Options

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

The Woolf reforms in the late 1990s saw the introduction of the Civil Procedure Rules and Pre-action protocols. Litigants had to consider alternatives to court as well as certain pre-action behaviour before issuing a claim. However, too many cases are still issued which take up significant court and judicial time. These cases that come to court often do not require a judicial decision on a point of law and could be resolved by other mechanisms, such as mediation. The proposals in this Impact Assessment will create a streamlined civil process allowing a speedier service whereby more people will be able to resolve disputes at an earlier stage in the process. Judicial intervention will only involve cases of greater complexity or points of law. This will provide a better service, more efficient use of judicial and court resources and prevent the escalation of costs to court users.

### What are the policy objectives and the intended effects?

The reforms will support a stronger focus on mediation and early intervention aiming to prevent unnecessary escalation of legal disputes. All defended small claims will be automatically referred to mediation, and where that does not settle the dispute traditional face-to-face judicial hearings will increasingly be replaced by paper determinations and telephone hearings. An increase in the small claims threshold, together with automatic referral to mediation for small claims, and mandatory mediation information sessions for cases outside small claims, will impact on the number of cases reaching a final hearing, releasing judicial time to deal with more complex cases and points of law.

### What policy options have been considered? Please justify preferred option (further details in Evidence Base)

The following options have been considered:

**Option 0:** Do nothing (base case).

**Option 1:** Increase the small claims track limit from £5,000 to £15,000.

**Option 2:** Automatic referral of all defended small claims cases to mediation.

**Option 3:** Mandatory mediation information sessions for defended claims in the fast and multi tracks with value up to £100,000.

**Option 4:** Parties given the opportunity to choose whether the small claims hearing is conducted by telephone or determined on paper.


**Option 5:** Extension of the mediation agreement enforcement provisions under the EU Mediation Directive for cross-border disputes, to cover domestic disputes.

All options are being considered. There are no preferred options at this stage.

<b>When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?</b>	May 2014
<b>Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?</b>	Yes

**Ministerial Sign-off** For consultation stage Impact Assessments:

*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: 22.02.2011 .....

# Summary: Analysis and Evidence

# Policy Option 1

**Description:** Increase the small claims limit from £5,000 to £15,000

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate:
<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Cost (Present Value)</b>
Low					
High					
Best Estimate					
<b>Description and scale of key monetised costs by 'main affected groups'</b>					
<b>Other key non-monetised costs by 'main affected groups'</b>					
Claimants and defendants may be worse off if case outcomes become less fair, or are perceived as less fair as a result of fewer court, judicial and legal resources being devoted to cases being moved in to the small claims track. Some legal costs would no longer be recoverable, which would make winning parties in particular worse off. There may be a reduction in the demand for legal services.					
<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Benefit (Present Value)</b>
Low					
High					
Best Estimate					
<b>Description and scale of key monetised benefits by 'main affected groups'</b>					
<b>Other key non-monetised benefits by 'main affected groups'</b>					
Moving claims to the small claims track would benefit HMCS as fewer court and judicial resources would be required to deal with cases. Claimants and defendants may benefit if they are able to reach case resolution quicker as a result of the proposal, and may also benefit from shorter hearing times, and from lower court fees. Legal fees may also be lower as a result of the proposal.					
<b>Key assumptions/sensitivities/risks</b>					<b>Discount rate (%)</b>
A higher small claims track limit reduces the resources spent on cases at the expense of the fairness of outcomes and customer satisfaction. Also there is a risk of more appeals if the limit is too high, leading to increased costs. In theory the optimal limit is point at which this trade-off maximises society's economic welfare overall. The optimal small claims track limit is unknown. It is assumed that the court and judicial resources allocated to a case are primarily driven by the track in which the case proceeds. It is assumed that the proposal would have no impact on the volume of cases being pursued through the civil courts overall. There is a risk that removing court, judicial and legal resources from cases could lead to less efficient case management and hearings.					
<b>Impact on admin burden (AB) (£m):</b>			<b>Impact on policy cost savings (£m):</b>		<b>In scope</b>
New AB:	AB savings:	Net:	Policy cost savings:		No

# Summary: Analysis and Evidence

# Policy Option 2

**Description:** Automatic referral of all defended small claims cases to mediation

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

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

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

**Other key non-monetised costs by 'main affected groups'**  
 HCMS may face costs increasing the mediation capacity, which is likely to involve selecting, and allocating work to, external mediators. There may be costs in relation to monitoring external mediation quality. Litigants who now go through mediation but still require a court hearing would be worse off in terms of time and cost. Legal services providers may experience a reduction in business.

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

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

**Other key non-monetised benefits by 'main affected groups'**  
 Fewer court and judicial resources would be required for any cases that settle through mediation as a result of the proposal. Litigants in cases that settle would be better off in terms of time and money given they would no longer need a court hearing. Mediation may also provide solutions to cases that are not available at court. Private civil and commercial mediators are likely to benefit from an increased demand for mediation services.

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

Key assumption is that mediation is sufficiently less costly than court resolution and that mediation success rates are sufficiently high to outweigh the increased costs of any cases which in future may be subject to both mediation plus a court hearing. The quality of external mediation is assumed to be the same as HMCS Small Claims Mediation Service mediation. It is assumed that case outcomes for cases which settle at court and those that settle via mediation are equal. The overall impact on claimant and defendant satisfaction is unclear.

<b>Impact on admin burden (AB) (£m):</b>		<b>Impact on policy cost savings (£m):</b>		<b>In scope</b>
<b>New AB:</b>	<b>AB savings:</b>	<b>Net:</b>	<b>Policy cost savings:</b>	<b>No</b>

# Summary: Analysis and Evidence

# Policy Option 3

**Description:** Mandatory mediation information sessions for defended claims in the fast and multi tracks with value up to £100,000

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

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

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

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

HMCS may face costs related to selecting the mediation providers that will provide the information sessions and allocating any mediations that result, plus costs associated with monitoring the quality of information sessions and any resulting mediation. There may also be costs monitoring that mediation sessions had been attended. Claimants and defendants would face additional time and possibly financial costs as they would be required to attend an information session. Legal service providers may face a reduction in demand if the proposal leads to more mediation and fewer court cases.

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

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

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

HMCS may require fewer judicial and court resources if fewer cases reach court, or if cases are simpler once they reach court. Claimants and defendants would have increased access to information regarding mediation, which may ensure mediation is undertaken when appropriate. Any mediation that takes place as a result of the proposal would benefit private and commercial mediators, and would benefit claimants and defendants in terms of reduced time and lower financial costs.

**Key assumptions/sensitivities/risks**

Discount rate (%)

Key assumption is that claimants and defendants are unaware of mediation and once aware more will use mediation instead of court resolution, and success rates for mediation will be sufficiently high to generate overall savings. The costs associated with information sessions are unknown, as is the proportion of information sessions that would result in a mediation, or the proportion of mediations that would result in a settlement. Assumed that there would be no impact on the overall number of cases being pursued. Assumed that there would be no impact on case outcomes. Risks include that it is unclear at this stage how the quality of external mediation or information sessions will be monitored and controlled, or how external information session and mediation providers will be selected, and work allocated to them. The overall impact on claimant and defendant satisfaction is unclear.

<b>Impact on admin burden (AB) (£m):</b>		<b>Impact on policy cost savings (£m):</b>		<b>In scope</b>
New AB:	AB savings:	Net:	Policy cost savings:	No

# Summary: Analysis and Evidence

# Policy Option 4

**Description:** Parties given the opportunity to choose whether the small claims hearing is conducted by telephone or determined on paper.

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate:
<b>COSTS (£m)</b>					
		<b>Total Transition</b> (Constant Price) Years	<b>Average Annual</b> (excl. Transition) (Constant Price)	<b>Total Cost</b> (Present Value)	
Low					
High					
Best Estimate					
<b>Description and scale of key monetised costs by 'main affected groups'</b>					
<b>Other key non-monetised costs by 'main affected groups'</b>					
HMCS may face costs associated with increasing telephone hearing capacity. There may be some ongoing costs related to making decisions in cases where claimants and defendants have different preferences regarding the channel through which they would like the hearing to take place.					
<b>BENEFITS (£m)</b>					
		<b>Total Transition</b> (Constant Price) Years	<b>Average Annual</b> (excl. Transition) (Constant Price)	<b>Total Benefit</b> (Present Value)	
Low					
High					
Best Estimate					
<b>Description and scale of key monetised benefits by 'main affected groups'</b>					
<b>Other key non-monetised benefits by 'main affected groups'</b>					
HMCS may benefit if hearings are done by paper or telephone if fewer court and judicial resources are required to reach the same case outcome. Claimants and defendants choosing to have a paper or telephone hearing may benefit from reduced travel time and financial cost, including hearing fees. Providing a choice should improve customer satisfaction.					
<b>Key assumptions/sensitivities/risks</b>					<b>Discount rate (%)</b>
Key assumption is that claimants and defendants select the channel which is most appropriate for their case, leading to same outcomes secured at lower total cost, more quickly and more conveniently. The number of telephone and paper hearings that would be undertaken each year is unknown. Both parties would have to agree to a paper or telephone hearing in order for one to take place. Where there is disagreement, it is assumed that a more resource intensive channel would be used. Assumed that any decisions made in paper or telephone hearings would be of equal quality to the decisions that would have been made in face to face hearings. Assumed that hearing fees would be different for telephone, paper, and face to face hearings. Assumed that the proposal would have no impact on the volume of cases being pursued through the civil courts overall.					
<b>Impact on admin burden (AB) (£m):</b>			<b>Impact on policy cost savings (£m):</b>		<b>In scope</b>
New AB:	AB savings:	Net:	Policy cost savings:		No

# Summary: Analysis and Evidence

# Policy Option 5

**Description:** Extending the provisions in the EU Mediation Directive (for cross-border disputes) to domestic disputes.

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate:
<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Cost (Present Value)</b>
Low					
High					
Best Estimate					
<b>Description and scale of key monetised costs by 'main affected groups'</b>					
<b>Other key non-monetised costs by 'main affected groups'</b>					
Parties that apply to court to make a mediation agreement enforceable would have to pay an appropriate court fee. Any party that reneges on a mediation agreement under the current system would be worse off due to the more efficient enforcement processes. There may be a reduction in the demand for legal services overall if there are fewer court cases relating to mediation agreements not being kept, or more cases mediate and do not require a court hearing.					
<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Benefit (Present Value)</b>
Low					
High					
Best Estimate					
<b>Description and scale of key monetised benefits by 'main affected groups'</b>					
<b>Other key non-monetised benefits by 'main affected groups'</b>					
Claimants and defendants will benefit from increased confidence that mediation agreements can be made legally enforceable. They would also benefit from the more efficient way in which mediation agreements can be enforced, which should be quicker and reduce court and legal fees. HMCS would benefit from fewer court resources being required in cases where a mediation agreement has not been kept. Mediators may benefit if the proposal results in an increased demand for mediation.					
<b>Key assumptions/sensitivities/risks</b>					<b>Discount rate (%)</b>
It is assumed that in the majority of mediations that currently come to an agreement, the agreement is kept. The number of applications that would be made to the court to make agreements enforceable is unknown. It is assumed that the proposal would have no impact on the volume of cases being pursued overall. It is assumed that the proposal may increase the number of mediations undertaken overall, although the impact is not expected to be significant. It is assumed that the proposal would have no impact on case outcomes, or on the mediation settlement rate.					
<b>Impact on admin burden (AB) (£m):</b>			<b>Impact on policy cost savings (£m):</b>		<b>In scope</b>
New AB:	AB savings:	Net:	Policy cost savings:	No	

## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			England and Wales		
From what date will the policy be implemented?			April 2012 & April 2014		
Which organisation(s) will enforce the policy?			MoJ		
What is the annual change in enforcement cost (£m)?			N/A		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			No		
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> N/Q	<b>Non-traded:</b> N/Q	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			<b>Costs:</b> N/A	<b>Benefits:</b> N/A	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	<b>Micro</b> N/Q	<b>&lt; 20</b> N/Q	<b>Small</b> N/Q	<b>Medium</b> N/Q	<b>Large</b> N/Q
Are any of these organisations exempt?	No	No	No	No	No

## Specific Impact Tests: Checklist

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
<b>Statutory equality duties<sup>1</sup></b>	Yes	30
<b>Economic impacts</b>		
Competition	No	30
Small firms	Yes	30
<b>Environmental impacts</b>		
Greenhouse gas assessment	No	30
Wider environmental issues	No	30
<b>Social impacts</b>		
Health and well-being	No	31
Human rights	No	31
Justice system	Yes	31
Rural proofing	Yes	31
<b>Sustainable development</b>	No	31

<sup>1</sup> Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

## Evidence Base (for summary sheets) – Notes

### References

No.	Legislation or publication
1	Civil Procedure Rules <a href="http://www.justice.gov.uk/civil/procrules_fin/">http://www.justice.gov.uk/civil/procrules_fin/</a>
2	Transforming Civil Justice in England and Wales: A flexible, simple and proportionate approach <a href="http://www.justice.gov.uk/consultations/consultations.htm">http://www.justice.gov.uk/consultations/consultations.htm</a>
3	
4	

+ Add another row



# Evidence Base (for summary sheets)

## 1. Introduction

- 1.1 This Impact Assessment accompanies a Ministry of Justice consultation paper entitled: *Transforming Civil Justice in England and Wales: A flexible, simple and proportionate approach*<sup>2</sup>. The consultation paper sets out a number of proposals for reforming the way in which the civil justice system delivers its services in England and Wales. The reforms are designed to improve the experience of those using the justice system by improving processes and channelling cases towards the most appropriate services for resolution.
- 1.2 The aim of the consultation paper is to seek public views on proposals to provide a more streamlined, responsive and efficient civil justice system that better supports users by preventing the escalation of legal problems or disputes. Where judicial intervention is required, the proposals 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.
- 1.3 This Impact Assessment examines a number of proposals aimed at reforming the civil justice system and encouraging greater use of mediation to resolve disputes.

## Background

- 1.4 Civil mediation began to be used in England and Wales around 20 years ago with higher value commercial cases, and the first court mediation scheme was started at Central London County Courts in 1996. Lord Woolf's review of the civil justice system and his Access to Justice Reports of 1995 and 1996 signalled a change in court procedures for civil disputes enshrined in the Civil Procedure Rules (CPR).
- 1.5 Under these changes, the courts were given a role in providing information about alternative dispute resolution (ADR) and encouraging its use in appropriate cases - CPR 1.4(2)(e) now requires the court, as part of its responsibility to actively manage cases, to encourage the parties to use an ADR procedure if the court considers it appropriate and to facilitate the use of such procedures.
- 1.6 The CPR also has in place certain pre-action behaviour that parties must follow before issuing a claim in court. Pre-action protocols outline the steps parties should take to seek information from and to provide information to each other about a prospective legal claim. The CPR also enables the court to take into account compliance or non-compliance with an applicable protocol when giving directions for the management of proceedings, including costs.
- 1.7 Interest in ADR has been growing amongst the judiciary and legal professions. A 2007 report by the law firm Herbert Smith LLP suggested that since the introduction of the Civil Procedure Rules in 1999, ADR processes, particularly mediation, are no longer "alternative". They are firmly established in the range of mainstream dispute resolution techniques.
- 1.8 When a claim is issued and served there is a range of options for responding to it. When a claim is defended, both the claimant and defendant are sent an allocation questionnaire, which the judge uses to allocate the case to one of three tracks: the small claims track, the fast track or the multi-track. There are several factors that the court can take into account when allocating a claim to a certain track, for example, the views of the parties and the nature and complexity of the claim. However, the most straightforward way for the courts to distinguish between cases is on the basis of monetary value, so each different track has a financial limit, which determines what the normal track for a claim will be.
- 1.9 Small claims are defined as civil claims that are defended and have been allocated to the small claims track. Typically they have a value of £5,000 or less. There are exceptions in the specific legal areas of personal injury and housing disrepair which have an upper value limit of £1,000. In 2009, around 93,000 cases were allocated to the small claims track. Of these, around 10,000 cases mediated through the small claims mediation service, of which around 7,000 settled (the

---

<sup>2</sup> This will be published on 31 March 2011 at <http://www.justice.gov.uk/consultations/consultations.htm>.

overall settlement rate was around 73%). Around 47,000 small claims hearing took place, and around a further 39,000 claims were settled or withdrawn between the allocation process and the date of the hearing.

- 1.10 Currently, small claims are disposed of in two ways. The first route is via a small claims hearing before a district judge. These hearings are conducted on a face-to-face basis with parties usually travelling to the County Courts nearest to the defendant (following the principle of automatic transfer to the defendant's home court). An average small claim case takes approximately 6 months from issue to hearing.
- 1.11 The second route is the HMCS Small Claims Mediation Service which is accessible via judicial referral at the allocation stage or by the parties contacting the mediation service directly. In the vast majority of cases the district judge makes the referral rather than a direct self-referral by the parties. The mediation service sets up an appointment with both parties and approximately 98% of all appointments are conducted on the telephone. If mediation is unsuccessful the claim goes back into the small claims system for disposal by a district judge.
- 1.12 Before a dispute comes to court, parties are advised to follow the relevant pre-action protocol depending on the type of dispute. There are currently ten protocols covering various specialist areas of the court process. Having followed a particular protocol, and having been unable to settle the dispute, the claimant will ask the court to issue a claim on the defendant. If the claim is defended, the usual procedure for higher value disputes over £5,000 is for it to be allocated by a judge to either the fast or multi-track.
- 1.13 Typically, fast track claims have a value between £5,000 and £25,000. Multi-track claims are either more complex or have a monetary value over £25,000. Multi-track cases can be heard in either the High Court or County Courts depending on the choice of court and the nature of claim. In 2009, around 84,000 cases were allocated to either the fast or multi-track, but around only 20,000 of those claims were resolved by trial. It is usual for both parties to have legal representation in the Fast and Multi tracks, but parties typically represent themselves in small claims cases.
- 1.14 Fast track and Multi track cases can also be referred to mediation through the National Mediation Helpline (NMH). This is an externally provided, time-limited, low cost mediation service accessed via the National Mediation Helpline (NMH) or website. Cases are referred by the court to Helpline staff after the allocation process.
- 1.15 The mechanisms of alternative dispute resolution, and specifically alternative means of consumer redress, have also been on the agenda of the European Union for some time. The EU Directive on Mediation in cross-border disputes, which is due to be implemented in May 2011, makes a number of provisions which we are considering for domestic mediations.

### **Problem under consideration**

- 1.16 The four main stages of a claim are Issue, Defence, Allocation and Hearing. Over the past three years the settlement rate (cases that have settled before reaching a hearing) for defended small claims has increased year on year. Claims do not proceed for a variety of reasons and usually each stage of the court process provides a filter for cases withdrawing from the system.
- 1.17 Currently, many cases settle prior to a court hearing (or the case is withdrawn), but by that time have already used a significant amount of court resources. Further, some cases incur the expense of court proceedings when an alternative dispute resolution route may have been more appropriate. Parties should only come to court if they have a genuine dispute that cannot be resolved any other way, or if they have a debt that needs to be enforced. Where cases do come to court they should be resolved via the most effective and proportionate mechanism possible, such as mediation with judicial determination used only as a last resort allowing the judiciary to focus on legal disputes that cannot be resolved by the parties themselves.
- 1.18 Many cases may fall into the court system because litigants are unaware of the available alternatives. Automatic referral to mediation or mediation information sessions at the start of the court process would ensure that all alternatives to court had been considered and tried where appropriate.

- 1.19 The small claims track limit was last changed in 1999. Consequentially, many cases that would previously have been allocated to the small claims track are now, due to inflation, falling into the Fast track. The small claims track was designed to be less formal and allow people to resolve disputes themselves without professional legal representation and with little or no recoverable costs. Therefore, in some instances, legal court and judicial costs in cases that do require a hearing may be higher than appropriate.
- 1.20 Further, for small claims cases that do require a hearing, it may be appropriate in some cases for the hearing to take place by telephone, or for the hearing to be paper based only, which would require fewer court and judicial resources.

### Policy objective

- 1.21 There are a number of proposals contained within this Impact Assessment. Overall, the objective is to improve the efficiency of court services and to ensure that cases are resolved through the most appropriate route, including mediation. This might also relate to the channels through which court services are delivered.
- 1.22 The proposed new approach would ensure:
- All defended small claims would be automatically referred to mediation with a view to achieving a mediated settlement.
  - All claims allocated to the Fast and Multi track processes would be referred to a mediation information assessment, subject to exemptions where appropriate.
  - Small claims cases which do not settle through the mediation service would be referred to a district judge, and parties offered the opportunity to choose whether they would like the claim dealt with at a telephone hearing or by paper determination.
  - The small claims track limit of £5,000 would be raised to £15,000 in order that more claims are dealt with under the small claims procedures (subject to the suitability of the case).

### Economic Rationale

- 1.23 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 redistribution reasons (e.g. to reallocate goods and services to the more needy groups in society).
- 1.24 Intervention in this case would be justified primarily on efficiency grounds. Increasing the volume of cases resolved by mediation rather than through existing court processes would improve efficiency if the same outcomes were achieved using fewer resources overall. The same logic would apply to replacing face-to-face hearings with telephone hearings and paper determination where appropriate.
- 1.25 Increasing the small claims track limit so that higher value cases are treated as small claims should also provide efficiency gains, given that fewer court and judicial resources would be required for small claims. However, there is a trade-off: reducing the resources spent on cases may lead to worse case outcomes (e.g. in terms of fairness) and customer satisfaction. In theory, there is an optimal small claims track limit, which is the point at which the trade-off between these factors maximises society's economic welfare overall. The optimal small claims track limit is unknown.
- 1.26 The proposal to introduce the provisions in the EU Mediation Directive to apply similarly to domestic disputes would also be justified on efficiency grounds. The benefits provided by the proposals to increase mediation rely on cases settling at mediation, which assumes that any mediation agreements are enforceable. One reason for cases proceeding to court after mediation is that court judgments are legally enforceable, whereas mediation agreements are not. The proposal would give mediation agreements the same enforceability as court judgments, which may

increase the take-up of mediation. It should also reduce the risk of future cases proceeding through the court system in relation to parties renegeing on mediation agreements.

1.27 The proposals are all also likely to involve a set of equity impacts. As the proposals relate to reducing the court resources that are devoted to cases, this may reduce the economic welfare of court users. This reduction could relate directly to satisfaction with the new processes (e.g. if court users prefer face-to-face court hearings to telephone mediation), to fairness (if case outcomes become less fair), or to reduced confidence in the outcomes reached (if outcomes are perceived as less fair). Each proposal considered, and any package of proposals, would only be justified overall if the efficiency benefits outlined above were greater than these costs.

### Affected stakeholder groups, organisations and sectors

1.28 These proposals are likely to affect the following sectors and 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 any claimant and defendant solicitors dealing with claims that fall within scope of these proposals.
- *Her Majesty's Courts Service (HMCS)*: There is likely to be an impact on the County Courts dealing with these cases if the process results in a change in the number of cases settled via mediation, rather than requiring case management and final hearings or a change in the number of mediation agreements requiring enforcement.
- *The Judiciary*: There is likely to be an impact on the judiciary dealing with these cases, in affecting the numbers and types of cases coming to final hearing and requiring judicial determination. Also the proposals would affect the types of determinations undertaken for small claims, with a significant reduction in the use of face to face in-court hearings for small claims, being replaced by paper determinations and telephone hearing in more cases.
- *Private Civil and Commercial Mediators*: Due to the increase in the numbers of mediations being undertaken and the requirements for mediation information sessions for Fast and Multi track cases, there will be a significant increase in the amount of work available for civil and commercial mediators. The HMCS in-house Small Claims Mediation Service in its current form would be unable to cope with the increase in mediation expected under the proposals and it is intended that the additional work will be undertaken by private sector mediation providers.

## 2. Costs and benefits

2.1 This Impact Assessment identifies both monetised and non-monetised impacts on individuals, group 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.

### Option 0: Base case (do nothing)

#### Description

2.2 Under the do nothing option, the small claims track would remain at £5,000.

2.3 The overall 30 week target from issue to hearing would remain. Hearings would be face to face and take place in judges' chambers.

- 2.4 The HMCS Small Claims Mediation Service would continue to operate for cases in the small claims track. Cases would continue to be referred by district judges to the mediation service if parties have indicated on the allocation questionnaire that they wish to use the service.
- 2.5 Fast and Multi track cases would continue to be referred to the National Mediation Helpline in limited numbers, but in some cases parties would proceed to court without considering all the available alternatives.
- 2.6 Any domestic mediation agreements made would not be legally enforceable, and court cases would continue to result from instances when mediation agreements are not kept.
- 2.7 The “do nothing” option is compared against itself and therefore its costs and benefits are necessarily zero, as is its Net Present Value (NPV).

## **Option 1: Increase the small claims limit from £5,000 to £15,000**

### **Description**

- 2.8 Under this option, all claims valued under £15,000 would be allocated to the small claims track. The limit is currently £5,000. It is estimated that increasing the limit to £15,000 would move around 12,000 additional cases into the small claims track per year from the Fast track.
- 2.9 In theory there is an optimal small claims track limit. If the limit is set too low and cases go to the Fast track instead of the small claims track, too many court, judicial, and legal resources would be used in relation to the value of cases, which could be resolved more simply. On the other hand if the limit is set too high then more complex cases would fall into the small claims track, which might find it hard to cope with these cases. There might be worse case outcomes (e.g. in terms of fairness) and worse customer satisfaction. In addition these cases might be subject to appeal and hence require additional judicial system resources at a higher court. This might remove any judicial system savings and could even generate net judicial system costs.
- 2.10 In addition to which track is most suitable given the complexity of the case, the position relating to court capacity should also be considered. In particular if there is spare capacity in relation to HMCS processing cases in one track, but a capacity shortfall in relation to another type of track, and if adjusting capacity is costly, then shifting cases from one track to the other might improve overall court system efficiency and overall case backlogs and waiting times. This would depend upon the nature of the HMCS cost base, i.e. the extent of sunk and fixed costs.
- 2.11 The optimal limit is the point at which the trade-off between these factors maximises society’s economic welfare overall. Whilst the optimal small claims track limit is unknown the premise of these proposals is that the £5,000 limit is suboptimal and the new £15,000 is optimal. This key assumption drives the analysis of costs and benefits.

### **Costs**

#### **HMCS**

- 2.12 There might be some minor one-off transition costs associated with familiarisation and awareness.
- 2.13 HMCS charges fees for the services it provides, and HMCS fees are assumed to cover HMCS costs. As such a measure which affected HMCS costs would have a neutral financial impact on HMCS.
- 2.14 In this case, HMCS should incur costs in the form of a loss of court fee income from Fast track cases and an increase in operational court costs for small claims track cases. These costs should mirror the benefits of reduced operational court costs for Fast track cases and increased court fees for small claims track cases.
- 2.15 It is assumed that HMCS capacity would not be adjusted in light of these proposals. As such no court capacity adjustment costs would be incurred.

#### **Claimants and defendants**

- 2.16 The cost rules relating to recoverable costs for small claims differ greatly from those of the fast track and multi-track. In the fast and multi tracks the successful party is generally able to recover their costs, including the cost of legal representation, from the unsuccessful party. In the small claims track the costs that can be recovered from the other side are strictly limited. The proposal will therefore lead to parties paying for many of their own legal costs. Winning parties would therefore be worse off if some costs are no longer recoverable.
- 2.17 In addition in the small claims track there is more of an expectation that claimants and defendants would not use legal professionals and instead might represent themselves. This might generate a cost for claimants and defendants (although likely to be outweighed by the benefit of not using legal professionals).
- 2.18 The proposal may make case outcomes less fair for those cases moved into the small claims track, given that fewer court, judicial and legal resources will be devoted to those cases in the future. Claimants and defendants may also perceive outcomes as less fair, and customer satisfaction may fall.

#### *Legal service providers and mediation service providers*

- 2.19 In general, any costs to service providers from reduced levels of business would mirror the gains to claimants and defendants who use, and pay for, these services. We assume that if there was a reduction in business in this area for services providers then they would engage in other activity relating to other types of case, or may engage in other types of work, of a broadly equivalent value. As such services providers would incur adjustment costs from the changing pattern of demand but would not incur ongoing costs.
- 2.20 In this instance moving cases to the small claims track may create a reduction in the demand for professional legal services. In part, this may be due to the fact that some costs in the small claims track are not recoverable. In addition, the processes which apply to small claims track cases are different and are designed to require less professional legal input. The scale of this reduction in demand is unclear.

#### *After The Event (ATE) insurers*

- 2.21 This is insurance relating to the one party (typically claimants) being exposed to the other party's (typically defendant's) costs if that party loses the case. It is unclear to what extent, if any, ATE insurance is taken out in relation to the cases affected by these proposals.
- 2.22 ATE insurance should be regarded in the same way as other services. A decrease in business for insurers, e.g. because lower risks are being covered, would equate to a gain to those claimants or defendants who pay the insurance premium.
- 2.23 In this instance in the small claims track the costs that can be recovered from the other side are strictly limited. Therefore, the proposal is likely to result in a reduction in the amount of ATE insurance that is taken out overall, given the exposure to costs is likely to be much lower for litigants whose cases move to the small claims track.

#### *Distributional costs*

- 2.24 Differences in cost recovery between the small claims track and the Fast track mean that the winning party (claimant or defendant) is likely to be worse off than the losing party (claimant or defendant) as the winning party would not be able to recover their legal costs from the losing party. It has been assumed that case outcomes would not be affected in aggregate. Winning claimants might gain at the expense of defendants in relation to the speed of payment if small claims case waiting times are shorter and if small claims case duration is shorter.
- 2.25 In relation to service providers mediation service providers are likely to gain whilst legal professionals are likely to lose out. In addition there is likely to be an overall transfer of resources away from service providers and towards litigators (claimants and defendants).

2.26 No assumption has been made about whether the distributional implications for claimants, defendants and service providers is positive or adverse, e.g. whether there is a benefit to society from a claimant (who might be an individual) losing at the expense of a defendant (who might be an insurer). It is possible that both claimants and defendants might be individuals, businesses and possibly public sector bodies. Insurers are likely to be defendants only.

### *Equity and fairness*

2.27 It has been assumed that case outcomes would not be affected in aggregate. However on an individual case basis the proposal may lead to outcomes being less fair in some cases. It has been assumed that this would apply equally to defendants and claimants.

### *Wider social and economic costs*

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

## **Benefits**

### *HMCS*

2.29 As explained, HMCS charges fees for the services it provides, and HMCS fees are assumed to cover HMCS costs. As such a measure which affected HMCS costs would have a neutral financial impact on HMCS.

2.30 In this case, HMCS should incur benefits in the form of increased court fee income from small claims track cases and reduced operational court costs for Fast track cases. These benefits should mirror the costs of increased operational court costs for small claims track cases and reduced court fees for Fast track cases.

2.31 In particular the small claims track was designed to be less formal and allow people to resolve disputes themselves without professional legal representation and with little or no recoverable costs. Moving claims to the small claims track would lower overall HMCS costs per case as fewer court and judicial resources would be required in order for cases to be dealt with.

2.32 It is assumed that HMCS capacity would not be adjusted in light of these proposals. As such no court capacity adjustment benefits would arise.

### *Claimants and defendants*

2.33 Claimants and defendants may benefit if they are able to reach case resolution quicker as a result of the proposal, given cases in the small claims track typically take less time to be resolved. They may also benefit from shorter hearing times, and from lower court fees.

2.34 The overall costs of using legal professionals and mediation service providers should be lower in the small claims track compared to the costs of using legal professionals in the Fast track, including because claimants and defendants could suitably represent themselves in the small claims track.

2.35 As outlined above, the proposal would lead to parties paying for many of their own legal costs. Losing parties would therefore be better off if some costs are no longer recoverable from them.

### *Legal service providers and mediation service providers*

2.36 In general, any benefits to service providers from increased levels of business would mirror the costs to claimants and defendants who use, and pay for, these services. Service providers might incur adjustment costs from the changing pattern of demand.

2.37 In this instance moving cases to the small claims track may create an increase in the demand for mediation service providers, as mediation is used more widely in small claims track cases to resolve the case. The scale of this increase in demand is unclear.

### *After The Event (ATE) insurers*

- 2.38 As explained it is unclear to what extent, if any, ATE insurance is taken out in relation to the cases affected by these proposals, and ATE insurance should be regarded in the same way as other services – an increase in business for insurers, e.g. because more risks are being covered, would equate to a cost to those claimants or defendants who pay the insurance premium.
- 2.39 In this instance no benefits to ATE insurers from increased levels of business are anticipated.

### *Distributional benefits*

- 2.40 As explained, no assumption has been made about whether the distributional implications for claimants, defendants and service providers is positive or adverse, e.g. whether there is a benefit to society from a claimant (who might be an individual) losing at the expense of a defendant (who might be an insurer). It is possible that both claimants and defendants might be individuals, businesses and possibly public sector bodies. Insurers are likely to be defendants only.

### *Equity and fairness*

- 2.41 Quicker payment and quicker case resolution might be associated with increased fairness.

### *Wider social and economic benefits*

- 2.42 The proposals would be associated with increased resource efficiency, given the assumptions applied.

### **Risks and assumptions**

- 2.43 The key assumption is outlined above, i.e. that the new £15,000 limit has been set at the optimal level. Many other assumptions stem from this.
- 2.44 The analysis assumes that small claims track cases would be subject to the same rate of appeals as they are now. The analysis assumes that the increased costs of a small claims track case which is subject to appeal compared to a Fast track case is not so great so as to wipe out the overall assumed efficiency gains.
- 2.45 It is assumed that there would be no impact on case outcomes and hence no impact on equity and fairness. Instead it is assumed that the proposals would generate a straight efficiency gain as comparable outcomes would be achieved with fewer overall resources.
- 2.46 It is assumed that the court and judicial resources allocated to a case are primarily driven by the track in which the case is proceeding under, rather than the nature of the case itself. This means that cases moving into the small claims track would require fewer court and judicial resources following the proposal.
- 2.47 It is assumed that the proposal would have no impact on the volume of cases being pursued through the civil courts overall. It is possible that claimants might be less willing to pursue cases given some legal costs are not recoverable in the small claims track. However the small claims track is designed to minimise the need to use legal professionals. On the other hand, once the probability of winning a case is taken into account, the expected legal costs for claimants might be lower as a result of cases moving to the small claims track and this might generate an increased volume of cases.
- 2.48 There is a risk that removing court, judicial and legal resources from cases could lead to less efficient case management and hearings. This may result in less fair outcomes as outlined above, or it could lead to additional HMCS costs that would reduce the efficiency benefits of the proposal.
- 2.49 It is assumed that HMCS capacity would not be adjusted in light of these proposals. It is assumed that current levels of capacity utilisation in the small claims track and in the Fast track support the assumption that shifting cases to the small claims track would improve court resource efficiency.



2.50 It is assumed that HMCS fees would adjust to any change in per case HMCS costs such that HMCS overall cost recovery would remain the same.

## **Option 2: Automatic referral of all defended small claim cases to mediation**

### **Description**

- 2.51 Under this option all defended small claims would be required to go through mediation. Civil cases that enter the court system often take up court resources and judicial time when an alternative form of dispute resolution may have been more appropriate. The proposal would involve cases being referred to telephone mediation once the case is defended.
- 2.52 The way in which this mediation would be provided remains open to consideration to some extent. In this analysis the assumption is that mediation would be undertaken by the existing HMCS Small Claims Mediation Service, plus accredited private sector civil and commercial mediators where required. It is assumed that where additional private sector mediators are needed their services would be procured by HMCS and HMCS court fees would cover their costs.
- 2.53 In relation to this model it is unclear how the quality of external mediation would be monitored and controlled. This may involve costs for HMCS and external mediators, which would ultimately be passed on to claimants and defendants. The process by which cases would be allocated to mediators is also unknown, as is the method by which external mediators would be selected. The eventual method chosen may have an impact on procurement and allocation costs, and on customer satisfaction.
- 2.54 An alternative arrangement, which is not analysed here, is that litigants wishing to resolve their dispute in court would first need to provide proof that they have undergone mediation and that this was not successful. Under this model there would be no need for HMCS to provide or arrange mediation services.
- 2.55 It is estimated that based on the current small claims track limit of £5,000, around 80,000 more mediations would take place per year. This figure would be higher if the small claims limit is increased to £15,000, as proposed under Option 1.
- 2.56 The key premise which underpins this proposal is that mediation is cheaper than resolving the issue in court and also that the success rate for mediation is high enough. If the success rate was too low then cases would undergo mediation and then also go to court, generating increased costs.

### **Costs**

#### **HMCS**

- 2.57 HMCS charges fees for the services it provides and HMCS fees are assumed to cover HMCS costs. As such, a measure which affected HMCS costs would have a neutral financial impact on HMCS.
- 2.58 In this instance, the proposal may create one off costs for HMCS associated with increasing its mediation capacity. While it is not proposed to expand the existing HMCS Small Claims Mediation Service, there may be costs associated with procuring or appointing external mediation services, and allocating cases to the chosen providers. There may also be costs in relation to monitoring the quality of external mediation. Fees would need to cover these costs.
- 2.59 HMCS might also incur costs in the form of reduced court fee income from cases which settle at mediation and no longer proceed to court. Currently there is a graduated fee scale for a hearing depending on the value of the claim. This reduction in fee income would relate to reduced costs to HMCS of hearing fewer claims.
- 2.60 There may also be some IT costs involved in changing relevant HMCS processes, but these have not yet been quantified.

2.61 It is assumed that HMCS capacity would not be adjusted in light of these proposals. As such no court capacity adjustment costs would be incurred.

### *Claimants and defendants*

2.62 Claimants and defendants would incur the costs of undergoing mediation, including the fees and financial costs involved. There may be other costs associated with the allocation process. For cases which do not settle at mediation and which proceed to court after all such mediation costs would all be additional. In other cases these mediation costs would be offset by the savings from not going to court.

2.63 Current mediation success rates are likely to fall as a result of all cases being referred to mediation. This is because cases are currently self-referred to mediation, implying that both parties are willing and suitable for this alternative resolution. This might not apply to all cases.

2.64 Mediation 'success' refers to the case being settled. It is possible that a case might be settled but that the outcome might be less fair than under a court hearing. Claimants and defendants may place a value on the resolution process being fair and being seen to be fair. This may include providing greater certainty and reassurance that the outcome is fair. Under this analysis we assume that a settlement reached under mediation is as fair as a settlement reached in court, hence the above costs would not materialise. This is a strong assumption.

2.65 Other aspects of customer satisfaction might differ between mediation and court-based resolution. Some claimants and defendants might place a value on going to court, for example winning parties who feel that they have been vindicated.

### *Legal service providers and mediation service providers*

2.66 In general, any costs to service providers from reduced levels of business would mirror the gains to claimants and defendants who use, and pay for, these services. We assume that if there was a reduction in business in this area for services providers then they would engage in other activity relating to other types of case, or may engage in other types of work, of a broadly equivalent value. As such services providers would incur adjustment costs from the changing pattern of demand but would not incur ongoing costs.

2.67 In this instance referring all cases initially to mediation would create a reduction in the demand for professional legal services as fewer such services are involved in mediation and as cases resolved successfully at mediation would not proceed to court, and hence not require legal professional services at that level. However, it is noted that the majority of litigants do not have legal representation for small claims cases.

### *Distributional costs*

2.68 Case outcomes for cases which settle at mediation and those which settle at court are assumed to be the same, hence the proposals are not anticipated to have distributional implications between claimants and defendants. In relation to service providers mediation service providers are likely to gain whilst legal professionals are likely to lose out. In addition there is likely to be an overall transfer of resources away from service providers and towards litigators (claimants and defendants).

2.69 No assumption has been made about whether the distributional implications for claimants, defendants and service providers is positive or adverse, e.g. whether there is a benefit to society from mediators gaining at the expense of legal professionals.

### *Equity and fairness*

2.70 It has been assumed that case outcomes would not be affected in aggregate. However on an individual case basis the proposal may lead to outcomes being less fair in some cases. It has been assumed that this would apply equally to defendants and claimants.

### *Wider social and economic costs*

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

## **Benefits**

### *HMCS*

2.72 As explained, HMCS charges fees for the services it provides, and HMCS fees are assumed to cover HMCS costs. As such a measure which affected HMCS costs would have a neutral financial impact on HMCS.

2.73 In this case, HMCS should incur benefits in the form of increased court fee income from the use of mediation and reduced operational court costs from cases which no longer proceed to court. These benefits should mirror the costs of providing additional mediation services and of receiving reduced court fee income from cases which proceed to court.

2.74 In addition for those cases that do require a court hearing, hearing times may be shorter as some elements of the dispute may have been resolved as part of the mediation process. This may lead to reduced HMCS costs per court case, with fees per case assumed to adjust accordingly.

2.75 It is assumed that HMCS capacity would not be adjusted in light of these proposals. As such no court capacity adjustment benefits would arise.

### *Claimants and defendants*

2.76 For those claimants which settle at mediation there would be savings from no longer resolving the issue at court. It is assumed that the costs of settling via mediation are lower than the costs of settling at court, including because the costs of using legal professionals is lower.

2.77 Claimants and defendants whose case settles at mediation are likely to benefit from quicker settlement. It takes on average 4-6 weeks from initial contact for parties to come to a settlement through the Small Claims Mediation Service, but it takes 10-12 weeks for a small claims hearing to be heard from the date the case is listed. However, this assumes that current waiting times are an accurate reflection of future waiting times, which may be a strong assumption given the large increase in the number of mediations that would occur under the proposal.

2.78 Further, 95% of small claims mediation service appointments are currently conducted over the telephone, and it is assumed that the majority of the additional mediations would also be undertaken by phone. Claimants and defendants whose cases settle by mediation may therefore benefit from reduced travel costs as a result of the proposal.

2.79 In addition, mediation can often have a variety of solutions to cases that are not always open to the judiciary. Claimants and defendants may benefit from these alternative solutions in cases where those solutions are more appropriate than those offered through the courts.

2.80 Some claimants and defendants may experience improved customer satisfaction with the mediation service compared to the court process. For example the mediation process might be less adversarial and less formal.

### *Legal service providers and mediation service providers*

2.81 In general, any benefits to service providers from increased levels of business would mirror the costs to claimants and defendants who use, and pay for, these services. Service providers might incur adjustment costs from the changing pattern of demand.

2.82 In this instance referring all cases to mediation would generate increased levels of business for mediation service providers. The activities involved, which would all ultimately be covered by fees, include bidding to supply the small claims mediations that cannot be provided by the HMCS Small Claims Mediation Service, being monitored by HMCS in relation to service quality, as well as providing the mediation and other associated services.

### *Distributional benefits*

2.83 As explained, no assumption has been made about whether the distributional implications for claimants, defendants and service providers is positive or adverse, e.g. whether there is a benefit to society from a mediator gaining at the expense of a legal professional.

### *Equity and fairness*

2.84 Quicker payment and quicker case resolution might be associated with increased fairness.

### *Wider social and economic benefits*

2.85 The proposals would be associated with increased resource efficiency, given the assumptions applied.

### **Risks and assumptions**

2.86 As explained above, a key assumption is that mediation success rates will be high enough and costs of mediation per case compared to court hearings will be lower enough to ensure that the diversion of more cases to mediation leads to HMCS resource efficiencies.

2.87 Under this analysis we assume that a settlement reached under mediation is as fair as a settlement reached in court. This is a strong assumption.

2.88 It is assumed that the costs of settling via mediation are lower than the costs of settling at court, including because the costs of using legal professionals is lower.

2.89 The quality of external mediation is assumed to be equal to the quality provided by the small claims mediation service.

2.90 The current time it takes to get to a mediation settlement could increase as more cases undergo mediation. Similarly, waiting times for small claims hearings could fall if fewer hearings take place as a result of the proposal.

2.91 It is assumed that the proposal would have no impact on the amount of HMCS resources required to enforce mediation settlements or court decisions.

2.92 It is assumed that the proposal would have no impact on the volume of cases being pursued through the civil courts overall. This volume may fall if perceived service standards fall, or if processes become more costly for claimants. Alternatively the volume may rise if costs per case fall and if cases are settled more quickly.

2.93 It is assumed that HMCS capacity would not be adjusted in light of these proposals. It is assumed that HMCS fees would adjust to any change in per case HMCS costs.

## **Option 3: Mandatory information sessions for all defended cases allocated to the Fast and Multi tracks with value up to £100,000.**

### **Description**

2.94 Under this proposal, defended cases with value up to £100,000 allocated to the Fast and Multi tracks would be referred to a mediation information session. This would be undertaken by external civil and commercial mediation providers. These information sessions would provide an opportunity for claimants and defendants to be given information about mediation and its potential benefits, and some cases may proceed to mediation, and settle as a result.

2.95 The mediation information sessions may be delivered by telephone or via electronic communication, and exemptions may apply.

- 2.96 It is estimated that around 90,000 cases are allocated to the fast and multi tracks and hence would be eligible for a mediation information session. Referral would be at the allocation stage, replacing the current process which allows the parties to request a stay for settlement. Unless exemptions apply, there would be an obligation to report back to the Court that an information session had been attended, with possible sanctions for failing to do so.
- 2.97 The key premise and assumption underpinning this proposal is that there is some sort of market failure in relation to court users not being aware of mediation services that are available. In addition the key assumptions are that once potential court users become aware of mediation services, some of them are likely to use mediation services, resolution by mediation is cheaper than resolution in court, and combined with this the success rate of mediation is high enough to generate overall resource savings, bearing in mind the costs of the initial awareness sessions. There are a number of strong and interlinked assumptions here.

## Costs

### *HMCS*

- 2.98 HMCS charges fees for the services it provides and HMCS fees are assumed to cover HMCS costs. As such, a measure which affected HMCS costs would have a neutral financial impact on HMCS.
- 2.99 In this instance there may be costs associated with selecting external mediation services to run the information sessions, and allocating sessions to the chosen providers. There may also be costs in relation to monitoring the quality of the information sessions. HMCS may also face costs associated with arranging any external mediation that takes place resulting from the mediation information sessions. HMCS may face some further costs associated with monitoring the fact that a mediation information session has been attended, and enforcing any sanctions if necessary. Fees would need to cover these various costs.
- 2.100 There may also be some IT costs involved in changing relevant HMCS processes, but these have not yet been quantified.
- 2.101 HMCS might also incur costs in the form of reduced court fee income from cases which settle at mediation and no longer proceed to court. This reduction in fee income would relate to reduced costs to HMCS of hearing fewer claims.
- 2.102 It is assumed that HMCS capacity would not be adjusted in light of these proposals. As such no court capacity adjustment costs would be incurred.

### *Claimants and defendants*

- 2.103 Attending a mediation information session would impose costs on all claimants and defendants in terms of time. There may also be a financial cost, depending on the way in which the information session is funded. As the length and content of mediation information sessions is unknown, as is the delivery channel that would be used, it has not been possible to quantify these costs.
- 2.104 It is assumed that more cases would proceed to mediation instead of court as a result of having attended an information session. The extent of this is unknown. Claimants and defendants would then incur the costs of undergoing mediation, including the fees and financial costs involved. For cases which do not settle at mediation and which proceed to court after all, such mediation costs would all be additional. In other cases these mediation costs would be offset by the savings from not going to court.
- 2.105 Mediation 'success' refers to the case being settled. It is possible that a case might be settled but that the outcome might be less fair than under a court hearing. Claimants and defendants may place a value on the resolution process being fair and being seen to be fair. This may include providing greater certainty and reassurance that the outcome is fair. Under this analysis we assume that a settlement reached under mediation is as fair as a settlement reached in court, hence the above costs would not materialise. This is a strong assumption.

- 2.106 Other aspects of customer satisfaction might differ between mediation and court-based resolution. Some claimants and defendants might place a value on going to court, for example winning parties who feel that they have been vindicated.

#### *Legal service providers and mediation service providers*

- 2.107 In general, any costs to service providers from reduced levels of business would mirror the gains to claimants and defendants who use, and pay for, these services. We assume that if there was a reduction in business in this area then services providers would engage in other activity relating to other types of case, or may engage in other types of work, of a broadly equivalent value. As such services providers would incur adjustment costs from the changing pattern of demand but would not incur ongoing costs.
- 2.108 In this instance, for any cases that choose to mediate as a result of attending a mediation information session and subsequently settle, cases would no longer require court hearings. This would result in a reduction in the demand for legal representation at court. Similarly, cases that fail to settle at mediation may require fewer legal resources once at court if some elements of the case have been resolved through mediation.

#### *After The Event (ATE) insurers*

- 2.109 This is insurance relating to the one party (typically claimants) being exposed to the other party's (typically defendant's) costs if that party loses the case.
- 2.110 ATE insurance should be regarded in the same way as other services. A decrease in business for insurers, e.g. because lower risks are being covered, would equate to a gain to those who pay the insurance premium.
- 2.111 As above, the proposal may reduce the number of cases reaching court if an increased volume of mediation takes place and is successful. This would be associated with a reduction in the amount of ATE insurance being taken out overall.

#### *Distributional costs*

- 2.112 Case outcomes for cases which settle at mediation and those which settle at court are assumed to be the same, hence the proposals are not anticipated to have distributional implications between claimants and defendants. In relation to service providers mediation service providers are likely to gain whilst legal professionals are likely to lose out. In addition there is likely to be an overall transfer of resources away from service providers and towards litigators (claimants and defendants).
- 2.113 No assumption has been made about whether the distributional implications for claimants, defendants and service providers is positive or adverse, e.g. whether there is a benefit to society from mediators gaining at the expense of legal professionals.

#### *Equity and fairness*

- 2.114 It has been assumed that case outcomes would not be affected in aggregate. However on an individual case basis the proposal may lead to outcomes being less fair in some cases. It has been assumed that this would apply equally to defendants and claimants.

#### *Wider social and economic costs*

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

### **Benefits**

#### *HMCS*

- 2.116 As explained, HMCS charges fees for the services it provides, and HMCS fees are assumed to cover HMCS costs. As such a measure which affected HMCS costs would have a neutral financial impact on HMCS.
- 2.117 In this case, HMCS should incur benefits in the form of reduced operational court costs from cases which no longer proceed to court because they have settled at mediation. These benefits should mirror the reduced court fee income from such cases.
- 2.118 HMCS should benefit from any increase in fees charged to cover HMCS costs associated with the new mediation information sessions.
- 2.119 Conversely for those cases that do require a court hearing, hearing times may be shorter as some elements of the dispute may have been resolved as part of the mediation process. This may lead to reduced HMCS costs per case, with fees per case assumed to adjust accordingly.
- 2.120 It is assumed that HMCS capacity would not be adjusted in light of these proposals. As such no court capacity adjustment benefits would arise.

### *Claimants and defendants*

- 2.121 The benefit of the compulsory mediation information session would be to ensure that the parties are fully aware of the options available to them in resolving their dispute. This should ensure that the most appropriate route is chosen in terms of the resources involved, although the extent to which litigants are unaware of the options available to them is unclear.
- 2.122 Claimants and defendants that choose to go through mediation when they would not otherwise have done so, and subsequently settle at mediation, would benefit as a result of the proposal. Benefits may include reduced time to reach a case outcome if mediation was quicker than current court processes, and possibly reduced financial costs overall if any reduction in legal and court fees was larger than any mediation fees required.
- 2.123 Some claimants and defendants may experience improved customer satisfaction with the mediation service compared to the court process. For example the mediation process might be less adversarial and less formal.

### *Legal service providers and mediation service providers*

- 2.124 In general, any benefits to service providers from increased levels of business would mirror the costs to claimants and defendants who use, and pay for, these services. Service providers might incur adjustment costs from the changing pattern of demand.
- 2.125 In this instance referring all cases to mediation information sessions, and running additional mediations would generate increased levels of business for mediation service providers.

### *Distributional benefits*

- 2.126 As explained, no assumption has been made about whether the distributional implications for claimants, defendants and service providers is positive or adverse, e.g. whether there is a benefit to society from a mediator gaining at the expense of a legal professional.

### *Equity and fairness*

- 2.127 Quicker payment and quicker case resolution might be associated with increased fairness if mediation following a mediation information session provided a quicker resolution route than current processes.

### *Wider social and economic benefits*

- 2.128 The proposals would be associated with increased resource efficiency, given the assumptions applied.

## **Risks and assumptions**

- 2.129 As explained above, a key assumption is that mediation referral and success rates will be high enough and costs of mediation information sessions plus mediation per case compared to court hearings will be lower enough to ensure that the provision of universal mediation information sessions and diversion of more cases to mediation leads to HMCS resource efficiencies.
- 2.130 Under this analysis we assume that a settlement reached under mediation is as fair as a settlement reached in court. This is a strong assumption.
- 2.131 It is assumed that the costs of settling via mediation are lower than the costs of settling at court, including because the costs of using legal professionals is lower.
- 2.132 It is assumed that the proposal would have no impact on the volume of cases being pursued through the civil courts overall. This volume may fall if perceived service standards fall, or if processes become more costly for claimants. Conversely, the volume may increase if the proposal results in more efficient dispute resolution overall or if costs per case fall and if cases are settled more quickly.
- 2.133 It is unclear how the quality of external mediation and the mediation information sessions would be monitored and controlled. This may involve costs for HMCS and external mediators.
- 2.134 The method by which external mediators would be selected is unknown. The eventual method chosen may have an impact on procurement and allocation costs, and on customer satisfaction.
- 2.135 It is assumed that HMCS capacity would not be adjusted in light of these proposals. It is assumed that HMCS fees would adjust to any change in per case HMCS costs such that HMCS overall cost recovery would remain the same.

#### **Option 4: Parties given the opportunity to choose whether their face to face small claims hearing is instead conducted by telephone or determined on paper.**

##### **Description**

- 2.136 Currently small claims hearings are conducted face-to-face. Under this proposal, parties with small claims would be given the opportunity to choose whether the case is determined by the district judge at a telephone hearing or by paper determination, rather than face to face. Where there is disagreement, it is assumed that the more resource intensive channel would be used. There are currently around 47,000 small claims hearings per year.
- 2.137 The key premise behind these proposals is that claimants and defendants will choose the most appropriate communications channel for their case, and hence that case outcomes would not be any worse but fewer resources would be used to form a resolution, which might also be formed more quickly and possibly with a improved customer experience.

##### **Costs**

###### **HMCS**

- 2.138 HMCS charges fees for the services it provides and HMCS fees are assumed to cover HMCS costs. As such, a measure which affected HMCS costs would have a neutral financial impact on HMCS.
- 2.139 There would be costs for HMCS associated with increasing the volume of telephone hearings provided. HMCS already has a Service Level Agreement in place with BT Legal Connect for the provision of telephone conferences. It is expected that the existing infrastructure and contractual arrangements would be able to meet any extra volume as a result of the proposal. Therefore, the proposal is not expected to result in addition procurement or IT costs. This will be examined further over the consultation period.
- 2.140 While there would be no additional training costs for judges to deal with telephone hearings, there may be some minor one-off HMCS costs associated with familiarisation with the new processes. There may also be some ongoing costs in relation to making decisions in cases where claimants



and defendants have different preferences regarding the channel through which they would like the hearing to take place. There might also be ongoing HMCS administrative costs in relating to managing and implementing this exercise of choice.

- 2.141 In principle, moving from face to face to telephone and paper hearings could result in increased costs if it resulted in a greater number of appeals against decisions reached, or if the channels used were less appropriate, leading to increased HMCS costs overall. This could be the case for more complex cases. However, both parties would have to agree to a paper or telephone hearing for it to take place. It has been assumed that parties would select the most appropriate channel and hence that these costs would not arise.
- 2.142 It is likely that these additional operational costs would be outweighed by the HMCS cost savings outlined above. As such HMCS fees per case are assumed to adjust accordingly, leading to a reduction in total HMCS fee income.

#### *Claimants and defendants*

- 2.143 Some claimants and defendants may prefer face-to-face court hearings to telephone or paper hearings. However, it is assumed that both parties would have to agree to a paper or telephone hearing for it to take place. Therefore, the proposal should have no significant impact on customer satisfaction.
- 2.144 Costs may arise if parties elect to use a different channel and if they consider after the event that this was worse after all, for example if the cases took much longer than if all parties had met face to face. It is assumed that parties will not make wrong choices.
- 2.145 Any costs in relation to expressing a preference over the way in which small claims hearings would take place are not expected to be significant.

#### *Legal service providers and mediation service providers*

- 2.146 In general, any costs to service providers from reduced levels of business would mirror the gains to claimants and defendants who use, and pay for, these services. We assume that if there was a reduction in business in this area then services providers would engage in other activity relating to other types of case, or may engage in other types of work, of a broadly equivalent value. As such services providers would incur adjustment costs from the changing pattern of demand but would not incur ongoing costs.
- 2.147 In this instance we assume that the choice of communications channel would have no impact on levels of business for legal service providers and mediation service providers.

#### *Distributional costs*

- 2.148 Case outcomes for hearings undertaken by telephone or determined on paper are assumed to be the same as the outcomes provided by face to face hearings, hence the proposals are not anticipated to have distributional implications between claimants and defendants.
- 2.149 No assumption has been made about whether the distributional implications for claimants and defendants is positive or adverse.

#### *Equity and fairness*

- 2.150 It has been assumed that case outcomes would not be affected in aggregate. However on an individual case basis the proposal may lead to outcomes being less fair in some cases. It has been assumed that this would apply equally to defendants and claimants.

#### *Wider social and economic costs*

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

## Benefits

### *HMCS*

- 2.152 As explained, HMCS charges fees for the services it provides, and HMCS fees are assumed to cover HMCS costs. As such a measure which affected HMCS costs would have a neutral financial impact on HMCS.
- 2.153 In this case HMCS should incur benefits in the form of reduced operational court costs from hearings being undertaken by telephone or determined by paper, compared to face to face hearings. This follows as telephone hearings are expected to be shorter than face to face hearings, and paper determinations to involve less court and judicial resources than either face to face or telephone hearings. The proposal would generate efficiency savings for HMCS if the same case outcomes were achieved with lower court and judicial resources overall.
- 2.154 It is likely that these operational cost savings would outweigh the HMCS cost increases outlined above. As such HMCS fees per case are assumed to adjust accordingly.
- 2.155 It is assumed that HMCS capacity would not be adjusted in light of these proposals. As such no court capacity adjustment benefits would arise.

### *Claimants and defendants*

- 2.156 The proposal would result in telephone and paper hearings replacing face to face hearings in some instances. This should benefit claimants and defendants choosing these alternative delivery channels through reduced travel costs and time spent at hearings. Telephone hearings may be shorter on average, and paper determination would not require direct input from claimants and defendants.
- 2.157 It is anticipated that cases would be dealt with more quickly if hearings were done by telephone or on paper, which should result in quicker case resolution. Some claimants and defendants may also experience improved customer satisfaction with telephone or paper hearings.
- 2.158 Finally, court fees might be lower for paper and telephone hearings, reflecting the lower court and judicial resources involved. This would further benefit claimants and defendants choosing these delivery channels.

### *Legal service providers and mediation service providers*

- 2.159 In general, any costs to service providers from reduced levels of business would mirror the gains to claimants and defendants who use, and pay for, these services. We assume that if there was a reduction in business in this area then services providers would engage in other activity relating to other types of case, or may engage in other types of work, of a broadly equivalent value. As such services providers would incur adjustment costs from the changing pattern of demand but would not incur ongoing costs.
- 2.160 In this instance we assume that the choice of communications channel would have no impact on levels of business for legal service providers and mediation service providers.

### *Distributional benefits*

- 2.161 As explained, no assumption has been made about whether the distributional implications for claimants, defendants and the taxpayer is positive or adverse.

### *Equity and fairness*

- 2.162 Quicker payment and quicker case resolution might be associated with increased fairness if telephone hearings or paper determination provides quicker case resolution compared to face to face hearings.

### *Wider social and economic benefits*

2.163 The proposals would be associated with increased resource efficiency, given the assumptions applied.

### Risks and assumptions

2.164 The key assumption outlined above is that claimants and defendants would correctly make the right selection in terms of using the most resource efficient channel for their case. Related to this it is assumed that the proposal would have no impact on case outcomes. As a result there would not be an increase in appeals made as a result of cases wrongly directed to an inappropriate delivery channel.

2.165 The number of telephone and paper hearings that would be undertaken each year is unknown. Both parties would have to agree to a paper or telephone hearing in order for one to take place. Where there is disagreement, it is assumed that the more resource intensive channel would be used. Therefore, while the expected impacts of the proposal have been identified, the magnitude of these impacts is unknown.

2.166 The option to have paper and telephone hearings would be available to all small claims track cases. One risk is that paper and telephone hearings are less appropriate for claims of higher value, although the fact that all parties would need to agree to a paper or phone hearing should minimise the likelihood of case hearings being delivered through inappropriate channels.

2.167 It is assumed that any decisions made in paper or telephone hearings would be of equal quality to the decisions that would have been made in face to face hearings.

2.168 It is assumed that hearing fees would be different for telephone, paper, and face to face hearings, in line with the different amount of court and judicial resources each would involve.

2.169 It is assumed that the proposal would have no impact on the volume of cases being pursued through the civil courts overall, although the assumptions imply that volumes might rise.

2.170 It is assumed that HMCS capacity would not be adjusted in light of these proposals. It is assumed that HMCS fees would adjust to any change in per case HMCS costs such that HMCS overall cost recovery would remain the same.

## **Option 5: Extension of the mediation agreement enforcement provisions under the EU Mediation Directive for cross-border disputes to cover domestic disputes**

### Description

2.171 The EU Mediation Directive, which is due to be implemented on 6 April 2011, makes a number of provisions for mediations in cross-border disputes, in particular:

- ensuring that, with certain limited exceptions, the content of written settlements negotiated at mediations can be made enforceable;
- protecting mediators and mediation provider organisations from being compelled to give evidence, subject to specified exceptions; and
- ensuring that no party can be prevented from initiating proceedings because a limitation or prescription period expired “during the mediation process”.

2.172 The proposal would apply similar provisions to domestic disputes, so for instance, parties in civil disputes would have the certainty of knowing that they have an enforcement route available should one side not comply with the agreement reached at the end of the mediation.

2.173 In particular HMCS would provide a new service whereby mediation agreements are registered with the court and treated as if they were binding agreements. As such if the agreements break down it may be quicker, easier and less costly to take action to enforce them.

### Costs

## *HMCS*

- 2.174 As explained, HMCS charges fees for the services it provides and HMCS fees are assumed to cover HMCS costs. As such, a measure which affected HMCS costs would have a neutral financial impact on HMCS.
- 2.175 The proposal would generate some costs for HMCS associated with processing applications to make mediation agreements enforceable. The number of applications that would be made is unknown. The costs per application are not expected to be significant. HMCS fees should cover these costs.
- 2.176 The proposals might also lead to reduced future HMCS fee income if the act of making a mediation settlement enforceable leads to less future litigation and fewer future court cases, or to simpler future cases which require less HMCS resource and which lead to reduced HMCS fees per case.

## *Claimants and defendants*

- 2.177 The proposal would allow claimants and defendants to apply to make the mediation settlement agreement enforceable as a matter of choice. However, there would be court fees for such applications, which would have to be paid in all cases. It is assumed that these costs would be shared equally between claimants and defendants.
- 2.178 Any party that reneges on a mediation agreement under the current system would be made worse off by the proposal, which makes the enforcement process more efficient. This might relate to agreements being enforced more quickly than is the case under the current system.
- 2.179 Further, claimants and defendants in any cases where both parties choose to mediate as a result of this proposal may be worse off in terms of time and cost if the mediation fails, and the case has to proceed to court for a hearing.

## *Legal service providers and mediation service providers*

- 2.180 In general, any costs to service providers from reduced levels of business would mirror the gains to claimants and defendants who use, and pay for, these services. We assume that if there was a reduction in business in this area then services providers would engage in other activity relating to other types of case, or may engage in other types of work, of a broadly equivalent value. As such services providers would incur adjustment costs from the changing pattern of demand but would not incur ongoing costs.
- 2.181 The proposal to make mediation settlement agreements enforceable may reduce the demand for legal services if it results in a reduction in the need for legal representation. This might result from fewer cases being required where a mediation agreement has been reneged upon, or if the number of mediations increased, which in turn reduced the overall volume of court cases. These costs are not expected to be significant as the proposal is not expected to significantly increase the total number of mediations, and as reneging on mediation agreements is rare in practice.

## *After The Event (ATE) insurers*

- 2.182 This is insurance relating to the one party (typically claimants) being exposed to the other party's (typically defendant's) costs if that party loses the case.
- 2.183 ATE insurance should be regarded in the same way as other services. A decrease in business for insurers, e.g. because lower risks are being covered, would equate to a gain to those who pay the insurance premium.
- 2.184 As above, the proposal may reduce the number of cases reaching court if an increased volume of mediation takes place and is successful, or if fewer cases are required when mediation agreements are not adhered to. This would be associated with a reduction in the amount of ATE insurance being taken out overall.

## *Distributional costs*

- 2.185 Case outcomes for cases which settle at mediation and those which settle at court are assumed to be the same, hence the proposals are not anticipated to have distributional implications between claimants and defendants. In relation to service providers mediation service providers are likely to gain whilst legal professionals are likely to lose out. In addition there is likely to be an overall transfer of resources away from service providers and towards litigators (claimants and defendants).
- 2.186 No assumption has been made about whether the distributional implications for claimants, defendants and service providers is positive or adverse, e.g. whether there is a benefit to society from mediators gaining at the expense of legal professionals.

### *Equity and fairness*

- 2.187 It has been assumed that case outcomes would not be affected in aggregate. However on an individual case basis the proposal may lead to outcomes being less fair in some cases. It has been assumed that this would apply equally to defendants and claimants.

### *Wider social and economic costs*

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

### **Benefits**

#### *HMCS*

- 2.189 As explained, HMCS charges fees for the services it provides, and HMCS fees are assumed to cover HMCS costs. As such a measure which affected HMCS costs would have a neutral financial impact on HMCS.
- 2.190 The proposal would benefit HMCS as fewer resources would be required to deal with cases reaching court due to people renegeing on mediation agreements. The number of cases that would be avoided is unknown. There may be a further reduction in resources required if the number of mediations increased, leading to fewer court cases. These reduced HMCS costs would be associated with reduced HMCS fee income.
- 2.191 Conversely HMCS should secure increased fee income from providing the service of registering mediation agreements. This fee income would relate to the costs of providing the new service.

#### *Claimants and defendants*

- 2.192 The proposal would improve the mediation process as parties would be able to obtain a legally binding outcome instead of having to pursue a claim through the court if one party reneges on a mediation settlement agreement. Parties should benefit directly from increased confidence that the mediation settlement can be legally enforced.
- 2.193 Further, in cases where mediation agreements are reneged upon, claimants and defendants will benefit from a more efficient process by which to enforce the mediation agreement. This should be quicker and cost less in terms of court and legal fees.
- 2.194 Further, claimants and defendants in any cases where both parties choose to mediate as a result of this proposal may be better off in terms of time and cost if settlement is reached at mediation, as the case would no longer need to proceed to court for a hearing.

#### *Legal service providers and mediation service providers*

- 2.195 In general, any benefits to service providers from increased levels of business would mirror the costs to claimants and defendants who use, and pay for, these services. Service providers might incur adjustment costs from the changing pattern of demand.

2.196 In this instance the proposal may increase the demand for mediation services as external mediators would be required to undertake any additional mediations that occur as a result of the proposal.

#### *Distributional benefits*

2.197 As explained, no assumption has been made about whether the distributional implications for claimants, defendants and service providers is positive or adverse, e.g. whether there is a benefit to society from a mediator gaining at the expense of a legal professional.

#### *Wider social and economic benefits*

2.198 The proposals would be associated with increased resource efficiency, given the assumptions applied.

#### **Risks and assumptions**

2.199 Under this analysis we assume that a settlement reached under mediation is as fair as a settlement reached in court. This is a strong assumption.

2.200 It is assumed that in the majority of mediations that currently come to an agreement and that the agreement is kept. The number of applications that would be made to the court to make agreements enforceable is unknown.

2.201 It is assumed that the proposal would have no impact on the volume of cases being pursued overall.

2.202 It is assumed that the proposal may increase the number of mediations undertaken, although this increase is not expected to be significant.

2.203 It is assumed that the proposal would have no impact on case outcomes, or on the mediation settlement rate, or on the costs of mediation or the duration of mediation, or otherwise on mediation dynamics.

### **3. Enforcement and Implementation**

3.1 HMCS and the Judiciary will be responsible for implementing and enforcing these proposals. The majority of these (options 1 to 4) would take effect from April 2012, whereas option 4, which will require primary legislation will not take effect until 2014.

### **4. Specific Impact Tests**

#### *Equality Impact Assessment*

4.1 An Equality Impact Assessment Initial Screening has been completed and is attached at Annex 2.

#### *Competition Assessment*

4.2 We do not envisage any significant impacts on competition.

#### *Small Firms Impact Test*

4.3 Proposals 1-5 will have a beneficial impact on small firms as detailed above.

#### *Carbon Assessment and Other Environmental Impacts*

4.4 These proposals are not likely to have any significant impact on noise pollution, water pollution, air quality or any other environmental factor.

### *Health Impact Assessment*

4.5 These proposals will not have a significant impact on lifestyle or health and social care services.

### *Human Rights*

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

### *Legal Aid and Justice Impact Test*

4.7 The proposal is not expected to have any significant impact on legal aid. Impacts on HMCS are explained in the main body of the Impact Assessment.

### *Rural Proofing*

4.8 The proposal will benefit rural communities. Costs and time incurred travelling to courts will no longer be required as all mediations will be conducted by telephone – unless in exceptional circumstances.

### *Sustainable Development*

4.9 There is nothing in these proposals that will have a significant impact on sustainable development.

## Annex 1: Post Implementation Review (PIR) Plan

<p><b>Basis of the review:</b></p> <p>To evaluate the effectiveness of changes implemented in the Transforming Civil Justice proposals contained within this document. To obtain best practice and lessons learned from operational staff.</p>
<p><b>Review objective:</b></p> <p>To evaluate whether the proposals have resulted in a more efficient civil justice system, whether tangible savings have been made and to identify any consequential changes that may be required.</p>
<p><b>Review approach and rationale:</b></p> <p>Qualitative and quantitative data will be obtained from operational staff in the courts as well as from MoJ teams collecting performance data from the courts to assess the effectiveness of the changes</p>
<p><b>Baseline:</b></p> <p>Comparison of pre-implementation with post implementation data relevant to the changes</p>
<p><b>Success criteria:</b></p> <p>Mediation settlement rates and customer satisfaction rates remain high. Tangible savings made in terms of reduction in judicial sitting times, reduction in the number of DDJs and reduction in the number of claims that reach an actual face to face hearing.</p>
<p><b>Monitoring information arrangements:</b></p> <p>Assessment report to be published 1 after all changes have been implemented.</p>
<p><b>Reasons for not planning a PIR:</b></p> <p>N/A</p>



## **Annex 2: Equality Impact Assessment initial screening**