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| Title: Reforming civil jurisdiction limits Lead department or agency: Ministry of Justice Other departments or agencies: | Impact Assessment (IA) |
| | IA No: MoJ 067 |
| | Date: 29 March 2011 |
| | Stage: Consultation |
| | Source of intervention: Domestic |
| | Type of measure: Secondary legislation |
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Summary: Intervention and Options

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

Currently, cases are allocated to the High Court and County Court based on features including case complexity and financial value. However, the financial limits have not been changed for many years, resulting in many cases being allocated to an inappropriate court in terms of the court resources devoted to the case, leading to significant resource pressures in the High Court. These proposals seek to ensure that cases are heard at the most appropriate level of court, thereby ensuring the most efficient use of court and judicial resources through a rebalancing of the jurisdictions between the High Court and the County Courts. Government intervention is required as the changes can only be made via legislation.

What are the policy objectives and the intended effects?

The objective of the proposals is to free High Court resources by enabling the County Courts to deal with some cases that are currently heard by the High Court, where it is appropriate to do so. The High Court will have exclusive jurisdiction in difficult and technical areas of law, with County Courts dealing with a wider range of less complex cases. This is intended to ensure that the High Court is deployed on those complex and specialist cases that truly require its expertise, and that such cases receive quality first instance judgement which should reduce the number of appeals and increase efficiency.

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

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

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

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

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

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?

It will be reviewed three years from date of implementation.

Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?

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 1a, 1b, 1c

Description: Increase the equity jurisdiction of the County Courts to £350,000; Increase the financial limit below which claims may not be commenced in the High Court to £100,000 (with the exception of complex personal injury claims); Extend the power of the freezing orders to the County Courts.

| 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' | | | | | |
| There may be increased waiting times for all County Court users, although this is not expected to be significant. Litigants may perceive outcomes as less fair, given fewer resources are used in County Court cases compared to High Court cases. Legal professionals may face a cost in terms of reduced demand if more work is required for High Court representation compared to County Court representation. HMCS may incur increased costs from litigants appealing to go straight to the High Court after all. | | | | | |
| 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' | | | | | |
| There may be reduced waiting times in the High Court, although this is not expected to be significant. Litigants may face lower legal fees, lower court fees and reduced travel times if cases are now heard at their local County Court. HMCS should benefit from overall efficiency savings given fewer court resources would be used in cases being transferred to the County Courts, leading in aggregate to reduced waiting times and backlogs rather than to reduced court fees. | | | | | |
| Key assumptions/sensitivities/risks | | | | | Discount rate (%) |
| It is estimated that around 700 cases would be transferred from the High Court to the County Courts as a result of the proposal. It is assumed that the new limit is optimal, and hence that the proposal would have no impact on case outcomes and would not lead to an increase in appeals. If the new limits are optimal then there would be few if any applications for cases to be heard directly in the High Court after all. It is assumed that waiting times in the High Court and County Courts are broadly equivalent. It is assumed that the proposal would have no impact on the volume of cases being pursued through the civil courts overall, nor on the ability or willingness of court users to gain legal representation. | | | | | |
| Impact on admin burden (AB) (£m): | | | Impact on policy cost savings (£m): | | In scope |
| New AB: | AB savings: | Net: | Policy cost savings: | | No |

Summary: Analysis and Evidence

Policy Option 1d

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

| 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'

For cases that would have proceeded in the County Courts, litigants may face additional legal costs and travel costs. There may be an increase in waiting times for all High Court users. HMCS costs would be higher for these cases given court and judicial resources per case are higher on average in the High Court.

| 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'

Cases that currently commence in the County Courts, but subsequently transfer to the High Court would no longer need to be transferred. Litigants in these cases would benefit as allocation would be more efficient, as may perceive outcomes as fairer given additional court resources would be used in the High Court. HMCS would also benefit from the reduction in the cost of having to transfer cases. Legal professionals may benefit in cases that are now commenced in the High Court, although the overall impact on legal professionals is unclear.

Key assumptions/sensitivities/risks

Discount rate (%)

The number of specialist cases is unknown. It is assumed that there would be no net impact on the complexity of case allocation, which would generate further HMCS impacts. It is assumed that the proposal would have no impact on case outcomes. It is assumed that waiting times in the High Court and County Courts are broadly equivalent. It is assumed that the proposal would have no impact on the volume of cases being pursued through the civil courts overall, nor on the ability or willingness of court users to gain legal representation. It is assumed that the proposal would have no impact on the volume of freezing orders applied for and issued.

| | | | | |
|--|-------------|--|----------------------|-----------------|
| Impact on admin burden (AB) (£m): | | Impact on policy cost savings (£m): | | In scope |
| 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? | 01/04/2011 | | | | |
| 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 ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent) | Traded: N/Q | | Non-traded: 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? | Costs: N/A | | Benefits: N/A | | |
| Annual cost (£m) per organisation (excl. Transition) (Constant Price) | Micro N/Q | < 20 N/Q | Small N/Q | Medium N/Q | Large 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 |
|--|--------|--------------------|
| Statutory equality duties ¹ | Yes | 14 |
| Economic impacts | | |
| Competition | No | 14 |
| Small firms | Yes | 14 |
| Environmental impacts | | |
| Greenhouse gas assessment | No | 14 |
| Wider environmental issues | No | 14 |
| Social impacts | | |
| Health and well-being | No | 14 |
| Human rights | No | 14 |
| Justice system | Yes | 14 |
| Rural proofing | Yes | 15 |
| Sustainable development | No | 15 |

¹ 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 | The Brooke Report http://www.judiciary.gov.uk/publications_media/general/brooke-report.htm |
| 2 | Judicial Statistics http://www.judiciary.gov.uk/keyfacts/statistics/index.htm |
| 3 | http://www.justice.gov.uk/consultations/consultations.htm |
| 4 | |

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Evidence Base (for summary sheets)

1. Introduction

- 1.1 This Impact Assessment accompanies a Ministry of Justice (MoJ) consultation paper entitled: *Transforming Civil Justice in England and Wales: A flexible, simple and proportionate approach*². 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 targeting 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 support users by preventing the unnecessary escalation of legal problems or disputes where possible. 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 In January 2008, the Judicial Executive Board commissioned Sir Henry Brooke, a retired Lord Justice of Appeal to conduct an inquiry into the question of civil court unification. In August 2008, Sir Henry Brooke published his Report entitled: *Should the Civil Courts be Unified?*³ In the report, Sir Henry Brooke concluded that while it was not necessary to unify the civil courts, there were a number of areas in which the administration of civil justice could be improved. He proposed a series of recommendations some of which relate to the range of cases that should fall within the jurisdiction of the High Court and County Courts respectively.
- 1.4 This Impact Assessment examines four of Sir Henry Brooke's recommendations which aim to rationalise the jurisdiction in the civil courts between the County Courts and the High Court. This includes; increasing the equity jurisdiction of the County Courts⁴; amending the financial limit below which claims may not be commenced in the High Court; extending the power to grant freezing orders⁵ to certain judges in the County Courts; and removing some proceedings from the County Court jurisdiction. These proposals are more fully set out in the consultation paper under in the "Structural Reforms" section

Background

- 1.5 The first instance civil court structure consists of the High Court and County Courts, which hear most civil matters and have concurrent jurisdiction in certain cases. However, whilst the High Court has an unlimited civil jurisdiction, the jurisdiction of the County Court is limited in three ways. The first limitation is a financial limit beyond which the County Court has no jurisdiction to hear the case. The second is a geographical limitation where the court determines the appropriate venue for hearing. The third limitation is on the powers of the County Courts to grant remedies, which includes that the County Courts cannot grant freezing orders.

Increasing the equity jurisdiction of the County Court

- 1.6 The current County Court financial limit for chancery matters is £30,000, above which disputes must be heard in the Chancery Division of the High Court. The rationale for setting a limit is to ensure that only appropriate cases (of sufficiently high value) are heard in the High Court, reflecting the fact that the High Court has limited capacity, and that High Court cases use more court and judicial resources on average than County Court cases.

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

³ The Report "Should the Civil Courts be Unified" can be found at:
http://www.judiciary.gov.uk/publications_media/general/brooke-report.htm

⁴ The Equity jurisdiction in the County Courts is defined in the County Courts Act 1984 and annexed at the end of the document

⁵ A freezing order is a court order to freeze the assets of a defendant or of a person who has gone overseas or of a company based overseas to prevent them being taken out of the country.

- 1.7 The financial limit was last increased by the County Courts Jurisdiction Order 1981 and incorporated into the County Courts Act 1984. This limit has not changed since, meaning it has continued to fall in real terms in the intervening period.

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

- 1.8 The financial limit above which cases may commence in the High Court was last increased in April 2009 from £15,000 to £25,000 by the High Court and County Courts Jurisdiction (Amendment) Order 2009. As with the equity jurisdiction, the rationale for providing a financial limit below which cases cannot commence in the High Court is to ensure that only appropriate cases are heard in the High Court.
- 1.9 The Government considers that the current £25,000 financial limit is too low. Under the current limit, relatively low value debt and contract claims which are not complex in nature are being commenced in the High Court, which could appropriately be dealt with in the County Courts. In practice, such cases are often transferred to the County Court after commencement in any case, resulting in unnecessary costs for all parties concerned, including HMCS.
- 1.10 The exception to the current financial limits outlined above is that the limit for complex personal injury cases is currently £50,000. This proposal does not affect complex personal injury claims: the £50,000 limit would remain unchanged.

Extending the power of issuing freezing orders to the County Courts

- 1.11 A freezing order is a court order to freeze the assets of a person who has left the UK or a company based outside the UK, in order to prevent these assets from being taken out of the country. Typically, County Courts do not have the power to issue freezing orders, with the exception that a mercantile judge (in London) may do so. In all other areas, if a freezing order is required in a County Court case, the case must be transferred to the local District Registry of the High Court⁶ to issue the freezing order, and then back to the County Court.
- 1.12 The implication of this position is that claimants, for example estate agents, suing for small amounts of unpaid commission, have to inundate the Mercantile Courts with applications for pre-judgment freezing orders or apply to the Chancery Division of the High Court. This increases the workload of the High Court which is unnecessary, particularly as it is inappropriate for the High Court to be the point of entry for comparatively low value claims for what could be a simple and straight forward case. Consequently, the Government considers that the County Courts should be given the power to grant freezing orders.

Giving the High Court exclusive jurisdiction for specialist proceedings

- 1.13 Specialist claims deal with complex issues such as claims under trust law and companies law. Such claims could relate to the way in which companies are structured, schemes of arrangement, reduction of capital, insurance transfer schemes, and cross border mergers. Importantly, such cases require specialist legal knowledge which typically requires the expertise of a High Court judge familiar with the relevant area of law.
- 1.14 In practice, such cases are typically commenced in the High Court. However, if the financial limits are increased as proposed above, this could allow a number of these specialist claims (with value below £100,000) to be commenced in the County Courts. This would then involve costs for all affected parties given the case would subsequently have to be transferred to the High Court. This proposal therefore seeks to ensure that all specialist claims are commenced and heard in the High Court.

Problem under consideration

- 1.15 Currently, cases are allocated to the High Court and County Court based on features including case complexity and financial value. However, the equity jurisdiction of the County Court has not been increased for around thirty years. The limit below which cases must be commenced in the

⁶ A local District Registry is part of the High Court situated in various districts of England and Wales dealing with High Court family and civil business. District Registries are often co-located at County Courts.

High Court was last changed in 2009. This has resulted in many cases of low value being allocated to the High Court, when they could appropriately be dealt with in the County Courts.

- 1.16 The High Court has limited capacity, and is now subject to significant resource pressures. One problem is that this has led to long waiting times in the High Court, which negatively affects court users. Further, it is considered that many cases commenced in the High Court could appropriately be dealt with using fewer court and judicial resources in the County Court. The current situation may be considered an inefficient use of court and judicial resources. Customer service might also improve if the proposals lead to cases being heard in a more appropriate court, and if they lead to reduced legal costs as a result.
- 1.17 Similarly, County Courts do not currently have the power to grant freezing orders. Simple cases are often commenced in the High Court simply because the claimant wishes to seek a freezing order, which too may be considered an inefficient use of court and judicial resources.
- 1.18 Finally, if the proposals to increase the financial limits are implemented, specialist cases that do require the expertise of the High Court may fall under the jurisdiction of the County Court. To mitigate the risk that this may create unnecessary costs (e.g. if a case commenced in the County Courts and subsequently had to be transferred to the High Court) it is proposed to remove such specialist cases from the jurisdiction of the County Courts, regardless of the value of the case.
- 1.19 Government intervention is required for all the proposals considered as the changes can only be made via legislation.

Economic rationale

- 1.20 The conventional economic approach to government intervention to resolve a problem is based on efficiency or equity arguments. The Government may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or if there are strong enough failures in existing government interventions (e.g. waste generated by misdirected rules). In both cases the proposed new intervention itself should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and re-distributional reasons (e.g. to reallocate goods and services to the more needy groups in society).
- 1.21 The rationale for intervention in this case is to improve the efficiency of the court system by rebalancing the jurisdictions in the civil courts between the High Court and the County Courts. The current equity limits have fallen in real terms since they were set, and continue to fall. This has led to low value cases being heard in the High Court, which could appropriately be heard in the County Court. Increasing the limits should therefore provide efficiency benefits as fewer court and judicial resources will be used.
- 1.22 In theory, there is an optimal financial limit. If the limit is set too low, too many resources might be used in relation to the value of case. This inefficiency might manifest itself in terms of legal costs, court fees or court waiting times being higher than they might otherwise be. On the other hand if the limit is set too high then cases might be heard at a lower court which is not appropriate for case in question. This may lead to the case being referred back to the higher court, or to the lower court issuing a ruling which is less fair (and possibly subject to appeal), or to the lower court even using more resource to tackle a complicated issue.
- 1.23 In summary the rationale for the proposals relates to improving the effectiveness of the current triage arrangements, which are framed in terms of the financial limits applying to case allocation, the powers which a court might exhibit (e.g. freezing powers), and the ability to deal with specialist cases. More effective triage should lead to greater resource efficiency and also to improved equity and fairness.

Affected stakeholder groups, organisations and sectors

1.24 These proposals are expected to affect the following groups:

- Litigants including businesses, partnerships, homeowners and families disputing equity jurisdiction cases. Litigants disputing money claims. Litigants disputing some specialist claims arising from the Companies Act and Trust law.
- Businesses and individuals who seek or are subject to a freezing order.
- High Court and County Court users
- Legal professionals
- HM Court Service (HMCS)

2. Costs and benefits

2.1 This Impact Assessment identifies impacts on individuals, groups and businesses in the UK, with the aim of understanding what the overall impact to society might be from implementing these options. The costs and benefits of each option are compared to the do nothing option. Impact Assessments place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However there are important aspects that cannot sensibly be monetised. These might include how the proposal impacts differently on particular groups of society or changes in equity and fairness, either positive or negative.

Option 0: Base case (do nothing)

Description

2.2 Under the do nothing option, the limit for equity jurisdiction in the County Court would remain at £30,000. The current limit of the equity jurisdiction in the County Court was set in 1981. The limit below which claims may not be commenced in the High Court would remain at £25,000.

2.3 Further, it would remain the case that freezing orders could not be issued in the County Court. In cases where a freezing order is required, the case would be transferred to the local District Registry of the High Court to apply for a freezing order, and then transferred back to the County Court. Some specialist claims (complex proceedings other than monetary claims) that come under the Companies Act would continue to be commenced in the County Court. Further detail on the current rules and limits is outlined in the background section above.

2.4 Because the do-nothing option is compared against itself its costs and benefits are necessarily zero, as is its Net Present Value (NPV).

Option 1a: Increase the equity jurisdiction of the County Courts to £350,000; plus

Option 1b: Increase the financial limit below which claims may not be commenced in the High Court (with the exception of complex personal injury claims); plus

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

Description

2.5 Under Option 1a, the limit for equity jurisdiction in the County Courts would increase from £30,000 to £350,000. It is expected that increasing the equity jurisdiction to £350,000 would move approximately 200 low complexity cases from the High Court to the County Courts.

2.6 Under Option 1b, the limit under which cases cannot be heard in the High Court would be increased from £15,000 to £100,000. The limit for complex personal injury claims would remain unchanged at £50,000. It is estimated that implementation of this proposal will transfer around 500 cases annually from the High Court to the County Courts.

- 2.7 Under Option 1c, the power to grant freezing orders would be extended to judges in the County Courts. A freezing order is a court order to freeze the assets of a defendant or of a person who has gone overseas or of a company based overseas to prevent the assets being taken out of the country. Currently, freezing orders can only be granted in the High Court. The number of freezing orders applied for or granted each year is unknown, but the proposal should result in cases being transferred from the High Court to the County Court.

Costs

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

Litigants

- 2.9 Raising the financial limits would result in an increased volume of cases commencing in the County Courts. Since cases are being transferred from the High Court to County Courts, there may be longer waiting times at County Courts for all County Court litigants. However, this impact is unlikely to be significant as the volume of cases being transferred is small relative to the volume of cases heard by the County Courts.
- 2.10 It is assumed that the proposal would have no impact on case outcomes, based on the assumption that the County Courts could appropriately deal with the cases that would be moved there under this proposal. However, litigants may perceive outcomes as less fair, given fewer court and judicial resources have been used to reach a decision in their case.
- 2.11 The proposals would include providing an option to request that a case is heard at the High Court after all. There would be costs to litigants of exercising this option compared to the current position of be allocated to the High Court in the first instance.

HMCS

- 2.12 As above, the proposals would include providing an option to request that a case is heard at the High Court after all. There would be costs to HMCS of operating this process. We assume that these costs would in effect reduce the resource efficiency savings of moving cases to the County Court (see savings section below).
- 2.13 In relation to freezing orders, HMCS may incur some additional training costs for Circuit Judges. However, it is intended that training in issuing freezing orders will be incorporated into standard refresher training, meaning these costs are not expected to be significant.

Legal professionals

- 2.14 Legal professionals will incur a cost in terms of reduced demand for their services, assuming that more work is required (and higher legal fees are charged) for High Court representation compared to County Court representation. It is assumed that legal professionals would adjust to any changing pattern of demand, e.g. by engaging in different types of case or different types of business, but in so doing might incur business adjustment costs.

Benefits

Litigants

- 2.15 Raising the County Courts equity jurisdiction will result in reduced volumes of cases commencing in the High Court. Since cases are being transferred from the High Court to County Courts, this should result in shorter waiting times at the High Court for all High Court users. However, this impact is unlikely to be significant as the volume of cases being transferred is small relative to the volume of cases heard by the High Court.
- 2.16 Moving cases from the High Court to the County Courts should reduce legal expenses for litigants, assuming they are charged lower fees for legal representation in the County Courts

compared to the High Court. Equally court fees are likely to be lower in County Courts compared to the High Court.

- 2.17 Hearing cases in County Courts may reduce travel times for litigants. This is based on the assumption that County Courts are often closer and more convenient to travel to compared to the High Court.
- 2.18 As explained below in relation to HMCS benefits, the efficiency savings associated with improved resource efficiency may lead to reduced waiting times in aggregate (rather than to reductions in court fees) and this would benefit litigants.

HMCS

- 2.19 The proposal should result in efficiency savings associated with moving cases to the County Courts, where the court and judicial resources per case are lower on average compared to the High Court. The Option 1a proposal is expected to result in 200 fewer cases being heard at the High Court annually, although it has not been possible to quantify the savings this would generate. Under Option 1b a further 500 fewer cases might be heard at the High Court annually.
- 2.20 It is not expected that such resource efficiency savings would result in lower court fees. Instead it is expected that, in aggregate, waiting times and backlogs would be reduced over time.

Society

- 2.21 Freezing orders are used to prevent people from disposing of their assets or removing them out of the country pending judgment. They can be sought in any case in which the claimant has good grounds for asserting that the defendant is likely to dispose of assets before trial in order to prevent the claimant from obtaining satisfaction of a judgment. Therefore widening the jurisdiction of freezing orders would improve access for those seeking them. This may increase the deterrent effect which may lead to better behavior for people that are affected by the order which will overall be beneficial to society.

Risks and assumptions

- 2.22 It is estimated that 200 cases (under option 1a) plus a further 500 cases (under Option 1b) would be transferred from the High Court to County Courts as a result of this proposal. If this figure varies or fluctuates annually, the magnitude of the identified impacts would change accordingly.
- 2.23 The number of freezing orders applied for or granted each year is unknown. Therefore, while the expected impacts of the proposal have been identified, the magnitude of these impacts is unknown.
- 2.24 It is assumed that the proposed new financial limits would ensure cases are allocated to the most appropriate court in future, based on case value.
- 2.25 Based on the assumption that the proposed new financial limits are optimal, it is assumed that the proposals under Option 1a and Option 1b 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 a lower court.
- 2.26 It is assumed that any decisions made in relation to freezing orders by Circuit Judges are of equal quality to the decisions that would have been made by High Court judges or mercantile judges. If Circuit judges do not have the relevant expertise to issue freezing orders and make errors, this would have a direct negative impact on case outcomes, and may also create a risk of additional costs to HMCS and all affected parties if decisions were appealed. Although the proposal would grant County Courts the ability to issue freezing orders, cases that should appropriately be dealt with in the High Court would continue to be allocated there, regardless of whether they require a freezing order. Based on these two assumptions, it is assumed that the freezing order proposal would have no impact on case outcomes.

- 2.27 The assumption that cases would be allocated more appropriately in future implies that the process by which a person can request that they go straight to the High Court would be rarely used.
- 2.28 It is assumed that the improvement in court resource efficiency would lead to reduced aggregate waiting times and backlogs rather than to reduced fees.
- 2.29 It is assumed that the proposal would have no impact on the volume of cases being pursued through the civil courts overall, nor on the ability or willingness of court users to gain legal representation. It is assumed that the proposal would have no impact on the volume of freezing orders applied for and issued. At the margin it is possible that volumes might increase.

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

Description

- 2.30 The proposal would give the High Court exclusive jurisdiction for specialist claims (which are complex proceedings other than monetary claims) which come under the Companies Act. By preventing such cases from proceeding in the County Court, this would ensure that the expertise of the High Court bench is deployed for the most complex cases that require specialist knowledge. Examples of what constitutes a specialist claim are set out in the introduction section above.
- 2.31 The number of specialist hearings that currently commence in the County Courts is unknown. The number of cases that may commence in the County Courts if the financial limits are increased as proposed in Options 1a and 1b is also unknown.

Costs

Litigants

- 2.32 Some specialist cases may currently commence in the County Courts, and be heard there rather than subsequently being transferred to the High Court. In these cases, the proposal would increase legal expenses for litigants, assuming they are charged lower legal fees for legal representation in the County Courts compared to the High Court. Court fees might also be higher for the High Court compared to the County Court.
- 2.33 This may increase travel times for litigants, based on the assumption that County Courts are often closer and more convenient to travel to compared to the High Court.
- 2.34 Any additional cases heard in the High Court may result in greater waiting times at the High Court for all High Court users.

HMCS

- 2.35 HMCS may face additional costs for cases that move from the County Courts to the High Court given court and judicial resources per case are higher on average in the High Court. Case costs are assumed to be covered by case fees so the overall financial impact on HMCS should be neutral.

Benefits

Litigants

- 2.36 The proposal would mean that cases that currently commence in the County Courts, but subsequently transfer to the High Court would no longer need to be transferred. Litigants in these cases would benefit as allocation would be more efficient under the proposal. In effect there is a resource saving for cases which go straight to the High Court rather than going to the High Court via the County Court, and this resource saving would ultimately accrue to litigators as they cover court costs (via court fees) and the costs of legal professionals

- 2.37 For cases which would otherwise have been heard in the County Court litigators may consider, or otherwise perceive that outcomes as fairer, given greater resources and more expertise might be used on their case in the High Court.

HMCS

- 2.38 In relation to cases which would previously have transferred from the County Courts and the High Court the proposals would generate resource savings for HMCS.
- 2.39 Given that court fees themselves are expected not to change, the impact of this resource efficiency saving would be to reduce aggregate waiting times and backlogs.

Legal professionals

- 2.40 Legal professionals working on those cases that currently proceed in the County Courts, and which the proposal would move to the High Court, may benefit from the proposal from an increased demand for their services, assuming that more work is required (and higher fees are charged) for High Court representation compared to County Court representation. However, the overall impact on legal professionals is unclear given the proposal should make HMCS processes more efficient, which may result in a lower volume of work required overall (e.g. if the transfer process requires some professional legal input).
- 2.41 The beneficial impact on income for legal professionals would mirror the adverse impact on litigant costs, given that legal professionals are funded by litigants.

Risks and assumptions

- 2.42 The number of specialist cases that currently transfer from the County Courts to the High Court is unknown. Similarly, the number of specialist cases that are heard in the County Courts is unknown.
- 2.43 If the proposals to increase the financial limits set out in Options 1a and 1b were implemented, this would increase the likelihood that specialist cases could be commenced in the County Courts. This would increase the magnitude of the impacts identified, and hence this proposal could be viewed as a protection measure as part of a wider package of proposals. However, the number of specialist cases that would come within the financial jurisdiction of the County Courts is unknown.
- 2.44 It is assumed that there would be no impact on the complexity of the HMCS case allocation process. In theory the proposal could make this more complex (given the specialist nature of each case would now have to be taken into account) or it could make it simpler (as in some cases, the specialist nature of the case would determine where the case should commence, overriding any other considerations e.g. case value).
- 2.45 It is assumed that the proposal would have no impact on case outcomes. The benefit to litigants of cases which would have been heard in the County Court being heard in the High Court instead would therefore relate to the litigant perceiving that the outcome was more fair, or otherwise considering that the High Court process was more suitable and hence provided improved customer satisfaction.
- 2.46 It is assumed that the proposal would have no impact on the volume of cases being pursued through the civil courts overall, nor on the ability or willingness of court users to gain legal representation.
- 2.47 It is assumed that the level of HMCS and judicial resources would remain unchanged following the implementation of the proposal, and that any efficiency savings made would be translated into reduced waiting times.

3. Enforcement and Implementation

- 3.1 HMCS will be responsible for the enforcement of these proposals.

3.2 The Ministry of Justice will be responsible for the implementation of these proposals in 2012/13.

4. Specific Impact Tests

Statutory Equality Duties

4.1 A draft Equality Impact Assessment is attached at Annex 3.

Competition assessment

4.2 These proposals are likely to impact on businesses as they can bring the claims detailed above and could be subject to these claims. However, we do not believe that transferring a case between the High Court and the County Courts will have a significant effect on the number of claims raised or have any impact on the decisions made by the courts regarding those claims.

4.3 It is possible that more freezing orders would be issued as a result of these proposals. If a firm was subject to a freezing order it would not be able to operate and therefore compete. However some firms may benefit from additional freezing orders as it may help them recover costs from their debtors. We expect any increase in freezing orders to be minimal and therefore we have identified no significant impact on competition.

Small Firms Impact Test

4.4 These proposals are likely to impact on small businesses and other businesses as they can bring the claims detailed above and could be subject to these claims.

4.5 Small firms may benefit from Options 1a, 1b and 1c as they may have fewer travelling costs from bringing or defending a claim if it can be heard in the County Courts.

4.6 Small firms (and all firms) may be affected by proposal 3. It is possible that more freezing orders will be issued as a result of this proposal. If a firm is subject to a freezing order it will not be able to operate whilst the order is in place. Small firms may also benefit from this proposal if they are able to recover their debts more easily.

Carbon Assessment

4.7 The proposals could reduce or increase travelling distances for litigants, thereby reducing or increasing carbon emissions. Overall there may be a reduction.

Wider Environmental Impacts.

4.8 As a result of travelling distances being reduced or increased the proposals may have an impact on noise pollution, air quality and other associated environmental factors.

Health Impact Assessment

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

Human rights

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

Justice Impact Test

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

Rural proofing

- 4.12 Litigants based in rural areas are likely to be disproportionately affected by raising the equity jurisdiction as average property prices are lower in rural areas relative to urban ones. However, there are existing provisions in Part 30 of the Civil Procedure Rules which ensure that cases can be transferred to the High Court if the expertise of the High Court is required.
- 4.13 Proposals 1a,1b and 1c could benefit rural communities because of increased accessibility to the local County Courts.

Sustainable Development

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

Annex 1: Post Implementation Review (PIR) Plan

Basis of the review:

The main source of the review will be qualitative evidence from stakeholders. Where possible, will also be monitoring the volume of cases within the scope of these proposals although there might be difficulties in collating the data as judicial statistics are not robust enough to capture every case type.

Review objective:

To check whether the proposals have resulted in a more efficient civil jurisdiction, whether cases have been transferred from the High Court to the County Courts, or vice versa, and whether the quality of judicial decision making has been maintained.

Review approach and rationale:

Since quantitative data is difficult to obtain in the Royal Courts of Justice (RCJ) and these proposals concern a relatively small number of cases the most appropriate way to undertake a post-implementation review would be a scan of stakeholder views, taking anecdotal evidence from the judiciary where necessary.

Baseline:

Judicial statistics don't currently include a detailed enough breakdown of the volumes of cases by type annually. Furthermore, annual variations in cases as well as trends in judicial decision-making could make measuring success against a statistical baseline very difficult. Therefore our review will focus on qualitative evidence from stakeholders.

Success criteria:

The proposals will have been successful if the quality of judicial decision-making is maintained while resulting in a transfer of cases from the High Court to the County Courts.

Monitoring information arrangements:

Since a scan of stakeholder views would be the most appropriate review approach, this can be undertaken by collecting anecdotal evidence from the judiciary and other stakeholders where necessary.

Reasons for not planning a PIR:

N/A

Annex 2: Definition of Equity jurisdiction as defined by the County Courts Act 1984

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

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

(b) proceedings—

(i) for the execution of any trust, or

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

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

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

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

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

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

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

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