

**Title:** Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 – Judicial Measures

**IA No:** MoJ009/2018

**RPC Reference No:** N/A

**Lead department or agency:** Ministry of Justice

**Other departments or agencies:** Judicial Office

## Impact Assessment (IA)

**Date:** 20 December 2018

**Stage:** Legislation

**Source of intervention:** Domestic

**Type of measure:** Primary Legislation

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### Summary: Intervention and Options

**RPC Opinion:** Not Applicable

#### Cost of Preferred (or more likely) Option

Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2014 prices)	One-In, Three-Out?	Business Impact Target Status
N/A	N/A	N/A	Not in Scope	Not in Scope

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

Increasing the flexibility of judicial deployments across jurisdictions is key to responding to the changing demands of a reformed court system and making best use of the existing judicial cohort. There are seven specific areas where current legislation could be amended to further facilitate this:

1. Recorders cannot be deployed to sit in the Upper Tribunal to support the transaction of business there.
2. Only judges of the Commercial Court and Technology & Construction Court and not other eligible High Court Judges can be appointed to sit as judge-arbitrators.
3. Temporarily appointed High Court Judges can only sit in the High Court and Crown Court and not more widely.
4. Certain senior judges of the Employment Tribunals (ET) are not authorised to sit in the Employment Appeal Tribunal
5. Certain senior Employment Tribunal Judges are not authorised to sit in the First-tier Tribunal and the Upper Tribunal
6. Certain specific Judicial Titles can only be changed via primary legislation.
7. Tribunal Chamber Presidents of the Upper Tribunal, or the First-tier Tribunal, cannot hold multiple concurrent Presidencies in the same Tribunal.

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

The policy objectives are to increase the ability of the judiciary to be deployed flexibly to respond to changes in business demand, respond to the changing demands of the reform of the courts and tribunals system and allow smoother transaction of judicial business.

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

Option 0: Do nothing;

Option 1: Provide for the following judicial provisions:

1a: Make Recorders deployable to the Upper Tribunal;

1b: Enable more judges of the High Court to be appointed as a judge-arbitrator;

1c: Expand the range of courts/tribunals in which Deputy High Court Judges can temporarily sit;

1d: Appoint senior judges of the Employment Tribunals to the First-tier and Upper Tribunals;

1e: Make an amendment to the Lord Chancellor's power to amend certain judicial titles;

1f: Make it permissible for a Chamber President to be appointed to more than one chamber;

1g: Appoint presidents of the employment tribunals to the Employment Appeal Tribunal;

1h: Change the Title of Chief Bankruptcy Registrar to Chief Insolvency and Companies Court Judge;

Options 1a – 1h are the preferred options as they best meet the policy objectives.

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

Does implementation go beyond minimum EU requirements?	N/A			
Are any of these organisations in scope?	Micro No	Small No	Medium No	Large No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	Traded: N/A		Non-traded: N/A	

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

Signed by the responsible Minister:

Lucy Frazer MP

Date:

20/12/2018

# Summary: Analysis & Evidence

Policy Option 1a – 1h

Description: Flexible Judicial Deployment

## FULL ECONOMIC ASSESSMENT

Price Base Year 2016/17	PV Base Year 2016/17	Time Period Years 10yrs	Net Benefit (Present Value (PV)) (£m)			
			Low: N/A	High: N/A	Best Estimate: N/A	
<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	Optional		£		Optional	
High	Optional		£		Optional	
Best Estimate	Nil		£		£	
<b>Description and scale of key monetised costs by 'main affected groups'</b> As these measures amend existing legislation to allow more flexible deployment, organisational structures are already in place to enable the deployment. Therefore, no significant monetised costs are associated with these measures.						
<b>Other key non-monetised costs by 'main affected groups'</b> N/A						
<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	Optional		Optional		Optional	
High	Optional		Optional		Optional	
Best Estimate	Nil		Nil		Nil	
<b>Description and scale of key monetised benefits by 'main affected groups'</b> As these legislative measures will allow judges to be deployed more flexibly to deal with existing demand, it is not expected that there will be significant monetised benefits.						
<b>Other key non-monetised benefits by 'main affected groups'</b> The main benefits associated with these measures include: increasing the ability to deploy the judiciary flexibly to address regional or jurisdictional fluctuations in demand, allowing faster and more efficient disposal of cases; giving judges a wider range of experience in different jurisdictions and supporting career development; increasing the ability of the UK to remain competitive as a centre for arbitration internationally; allowing judges to be deployed to deal with a wider range of cases which are at risk of being disrupted or re-listed due to unforeseen events (e.g. sickness absence).						
<b>Key assumptions/sensitivities/risks</b>					<b>Discount rate (%)</b>	<b>%</b>
There will be a sufficient number of existing judges available to be deployed; that this will not cause shortages in other areas.						

## BUSINESS ASSESSMENT (Option 1)

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

# Evidence Base (for summary sheets)

## A. Background

1. The Act underpins the reform agenda to modernise the courts and tribunals fit for the 21st Century to make access to more straightforward, accessible and more efficient. The HM Courts and Tribunals Service (HMCTS) Reform Programme is expected to deliver savings of £200m per annum in steady state from 2023/24 (nominal prices), including judicial savings. Although delivering nominal savings, the judicial measures in the Act are essential to enabling the judiciary to respond to the changing demands of a reformed courts and tribunals system and delivering better services to users. The Act provides much greater flexibility to the deployment of judges allowing the senior judiciary to ensure the right judge are deployed to the right cases, taking account of changes in caseloads of different jurisdictions, which will also have direct benefits for all users of the courts and tribunals.
2. Increasing the flexibility of judicial deployments across all jurisdictions is key to enable the judiciary to respond to the changing demands of a reformed court system and making best use of the existing cohort and their time. The Lord Chief Justice of England and Wales (LCJ) and the Senior President of Tribunals (SPT) have far reaching powers to do this but there are seven specific areas where the Act amends legislation to allow for more flexible judicial deployment:
  - Recorders are currently unable to be deployed in the Upper Tribunal in order to support the transaction of business there, including judicial reviews.
  - In the High Court, only judges of the Commercial Court and judges doing official referees' business (now dealt with by judges of the Technology & Construction Court) can be appointed to sit as judge-arbitrators under section 93 of the Arbitration Act 1996, as opposed to other High Court judges.
  - When there is a need to appoint Deputy High Court Judges on a temporary basis for an immediate business need (e.g. to cover a period of sickness absence), these judges are limited to sitting in the High Court and Crown Court rather than more widely.
  - There is only limited flexibility to use the complement of judges between the Unified and Employment Tribunals which will be addressed by enabling senior judges of the Employment Tribunal to be judges of the First-tier Tribunal and Upper Tribunal.
  - Enabling the President of the Employment Tribunal to sit in the Employment Appeal Tribunal (EAT) will increase flexible deployment and is consistent with arrangements in the Unified Tribunals.
  - Allowing for a chamber president to be appointed to more than one chamber in the same tribunal will meet the aim of flexibly using the existing (and future) complement of chamber presidents, without having to recruit and appoint a new chamber president immediately there is a vacancy.
  - Changing the title of the Chief Bankruptcy Registrar to that of Chief Insolvency and Companies Court Judge in line with other judges of the Insolvency and Companies Court, as well as allowing this and additional similar judicial office title changes to be made via ministerial order rather than primary legislation is more efficient.
3. The sections discussed in this Impact Assessment (IA) amend current legislation which does not allow flexible deployment in the above areas. This aligns with a key element of wider court and tribunal reform which is to ensure that the judiciary can deploy judicial resources flexibly to where they are needed most.

## B. Policy Rationale and Objectives

4. The conventional economic rationales for government intervention are based on efficiency and equity arguments. The government may consider intervening if there are failures in the way markets operate (e.g., monopolies overcharging consumers) or where there are failures with existing government interventions (e.g., waste generated by misdirected rules). The proposed new

interventions 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 more the needy groups in society).

5. The principle rationale for the options discussed in this IA is efficiency. The legislative measures will increase the ability of the judiciary to deploy flexibly in order to respond to fluctuations in workload in different jurisdictions within the courts and tribunals system.
6. Legislation sets out in which jurisdictions different types of judges can work, so the main policy objective of these legislative measures is to build on statutory provisions to allow further flexible deployment in certain areas. This will allow the judiciary to respond to changes or anticipated changes in demand in certain areas, such as the growth in demand for judicial arbitration work for the Chancery Division of the High Court, Judicial Review work in the Upper Tribunal's Asylum & Immigration Chamber and to respond to fluctuations in demand between tribunals.

### **C. Affected Stakeholder Groups, Organisations and Sectors**

7. The main groups and stakeholders who will be affected by the options in this IA is shown below:
  - The judiciary, including salaried and fee-paid judicial office holders throughout the courts in England and Wales and the tribunals in England, Wales and Scotland.
  - HM Courts and Tribunal Service (HMCTS) which is the part of the Ministry of Justice (MoJ) which is responsible for administering the courts and tribunals service
  - Wider society, including taxpayers and users of the courts and tribunals service.

### **D. Description of Options Considered**

8. In order to meet the policy objectives a number of options have been considered:
  - **Option 0/Base Case: Make no legislative changes to the deployment of judges**
  - **Option 1: Introduce a package of flexible deployment measures:**
    - Option 1a: Make Recorders deployable to the Upper Tribunal
    - Option 1b: Enable more judges of the High Court to be appointed as a judge-arbitrator under section 93 of the Arbitration Act 1996;
    - Option 1c: Expand the range of courts and tribunals in which Deputy High Court Judges appointed temporarily can sit
    - Option 1d: Appoint senior judges of the employment tribunals to the First-tier Tribunal and Upper Tribunal.
    - Option 1e: Make an amendment of the Lord Chancellor's power to amend certain judicial titles, namely Senior Master of the Queen's Bench Division, Chief Chancery Master, Chief Taxing Master, Senior District Judge of the Family Division, Chief Insolvency and Companies Court Judge.
    - Option 1f: Allow a Chamber President of the Upper Tribunal, or the First-tier Tribunal, to also be appointed as Chamber President of another Chamber in the same level of Tribunal
    - Option 1g: Enable the appointment of Presidents of the Employment Tribunals to the Employment Appeal Tribunal.
    - Option 1h: Change the title of Chief Bankruptcy Registrar to that of Chief Insolvency and Companies Court Judge
9. Options 1a – 1h are the preferred options as the best meet the policy objectives.

## **Option 0 – Do nothing**

10. This option would see no changes to the current legislation on flexible deployment. Recorders would not be able to conduct judicial business in the Upper Tribunal; only judges of the Commercial Court and Technology & Construction Court would continue to be able to be appointed as judge-arbitrators; temporary appointments of Deputy High Court Judges would remain only available for deployment in the High Court or Crown Court. Business in the courts and tribunals relevant to these deployments would not benefit from additional judicial resource to hear cases which could impact on timeliness of hearings and result in delays.

## **Option 1 - Introduce a Package of Flexible Judicial Deployment Measures**

### Option 1a – Make Recorders deployable to the Upper Tribunal

11. The list of judicial office holders who are also judges of the Upper Tribunal is set out in section 6 of the Tribunals, Courts and Enforcement Act 2007 (TCEA 2007). The Upper Tribunal has a wide jurisdiction, including a limited number of first instance appeals, appeals against decisions of the First-tier Tribunal and judicial review of most challenges to decisions under the immigration legislation. A judge (other than an Upper Tribunal Judge or Deputy Upper Tribunal Judge) may only sit in the Upper Tribunal by request of the SPT with the agreement of the LCJ.
12. Currently, individuals who are Recorders are eligible to apply for appointment as a Deputy Upper Tribunal Judge under paragraph 7 to Schedule 3 the TCEA 2007. Recorders are also competent to act on request as a judge in the High Court under section 9 of the Senior Courts Act 1981. As both appointments require a Judicial Appointments Commission (JAC) competition this does not enable flexible deployment within a time frame suitable to meet business need in the Upper Tribunal.
13. Under this legislative measure, the 2007 Act will be amended to include Recorders in this list of judges to allow them to be deployed to the Upper Tribunal without a JAC process. This will allow swifter reaction to any increase in demand in particular jurisdictions.

### Option 1b – Enable more judges of the High Court to be appointed as a judge-arbitrator

14. Section 93 of the Arbitration Act 1996 currently enables judges of the Commercial Court or Technology & Construction Court (divisions of the High Court) to sit as judge-arbitrators, in order to conduct arbitration in commercial disputes. Under this legislative measure, puisne judges of the High Court and judges sitting in the High Court by virtue of section 9(1) of the Senior Courts Act 1981 with the permission of the LCJ will be able to be appointed in this way.
15. The primary reason for this change is to enable more High Court judges, such as judges of the Chancery Division, to act as judge-arbitrators under section 93 of the Arbitration Act 1996. In recent years, there has been a particular growth in demand for judicial arbitrations in a number of areas that fall within the jurisdiction of the High Court; this option will allow the appointment of additional judge-arbitrators to meet that demand.
16. For reasons of operational efficiency, the LCJ will be able to delegate his power to permit judges to accept an appointment under section 93 of the Arbitration Act. This delegation power is analogous to similar powers to delegate similar functions, which have been introduced into numerous statutory provisions relating to the LCJ since (and including) the enactment of the Constitutional Reform Act 2005.

### Option 1c – Expand the range of courts and tribunals in which Deputy High Court Judges appointed temporarily can sit

17. Section 94AA of the Constitutional Reform Act 2005 sets out circumstances under which the LCJ may appoint a person to sit in the High Court on a temporary basis where there is an immediate business need to do so. This appointment does not require a JAC process and therefore can be used

to react quickly to an urgent need, for example, to cover an unexpected sickness absence and avoid cases having to be disrupted or re-listed.

18. Currently, the legislation sets out that these appointments can only be made for a person to sit in the Crown Court or High Court. Under this measure, the legislation will be expanded to cover any court or tribunal in which a Deputy High Court judge could sit.

#### Option 1d - Appoint senior judges of the employment tribunals to the First-tier Tribunal and Upper Tribunal

19. The Tribunals, Courts and Enforcement Act 2007 s6 sets out the judges and other members of the First-tier and Upper Tribunals. Under existing legislation, members of a panel of judges of the employment tribunals or EAT are also members of the First-tier Tribunal and/or the Upper Tribunal. However, this does not necessarily include leadership judges.
20. Under this legislative measure, the President of the Employment Tribunal (England & Wales), the Presidents of the Employment Tribunal (Scotland), the Vice President of the Employment Tribunal (Scotland), and any Regional Employment Judge would be to be added to section 6 of the Tribunals, Courts and Enforcement Act 2007, so they will be appointed as members of the First-tier Tribunal and Upper Tribunal.
21. This legislative enables the SPT to delegate certain judicial functions to the employment senior leadership, in the same way that is already possible with members of a panel in the employment tribunals and the EAT.

#### Option 1e - Make an amendment to the Lord Chancellor's power to amend certain judicial titles.

22. Section 64(2) of the Courts Act 2003 contains a power for the Lord Chancellor to amend the judicial titles set out in section (2). There are certain judicial roles that are still not contained in section (2), resulting in inconsistency, delays and inflexibility. Judicial roles in sub-section 3C of section 89 of the Senior Courts Act 1981 are not catered for in section 64(2) of the Courts Act 2003. This anomaly is corrected by amending section 64 (2) of the Courts Act 2003.

#### Option 1f – Allow a Chamber President of the Upper Tribunal, or the First-tier Tribunal, to also be appointed as Chamber President of another Chamber in the same Tribunal

23. Section 7(2) of the TCEA says that a person, or two persons, are to preside over each chamber of the FTT and for each chamber of the UT. Section 7(3) says that a person may not at any particular time preside over more than one chamber of the FTT and may not at any particular time preside over more than one chamber of the UT (but may at the same time preside over one chamber of the FTT and over one chamber of the UT.). Under this legislative measure an amendment of the Tribunals, Courts and Enforcement Act 2007 makes it permissible for a judge to hold more than one Presidency at any level of tribunal.

#### Option 1g – Enable the Appointment of Presidents of the Employment Tribunals to the EAT

24. Provisions in the Tribunals, Courts and Enforcement Act 2007 allow for First-tier Tribunal Chamber Presidents to be members of the Upper Tribunal Chamber which provides additional capacity for experienced judges to hear appeals. However currently there is no similar provision for the President of Employment Tribunal (England and Wales) or the President of the Employment Tribunal (Scotland) to be appointed to the Employment Appeal Tribunal. Under this legislative measure, an amendment to section 22(2A) of the Employment Tribunals Act 1996 will provide for this.

#### Option 1h - Change the title of Chief Bankruptcy Registrar to that of Chief Insolvency and Companies Court Judge

25. Following the Alteration of Judicial Titles (Registrar in Bankruptcy of the High Court) Order 2018 (2018 No. 130) which came into force on 26/02/18, the title of Bankruptcy Registrars was amended to Insolvency and Companies Court Judge. Changing the title of the Chief Bankruptcy Registrar will

align the judicial titles and will more clearly describe this judicial role. This requires amendments to the Senior Courts Act 1981 and Constitutional Reform Act 2005.

## **E. Cost and Benefit Analysis**

26. This IA follows the procedures and criteria set out in the Impact Assessment Guidance and is consistent with the HM Treasury Green Book.
27. Where possible, this IA identifies both monetised and non-monetised impacts on individuals, groups and businesses in England and Wales with the aim of understanding what the overall impact on society might be from the proposals under consideration. The costs and benefits of each option are compared to option 1A, the do nothing or 'baseline' case. As the 'baseline' option is compared to itself, the costs and benefits are necessarily zero, as its Net Present Value (NPV).
28. IAs place a strong focus on the monetisation of costs and benefits. There are often, however, important impacts that cannot sensibly be monetised. These might be impacts on certain groups of society or some data privacy impacts, positive or negative. Impacts in this IA are therefore interpreted broadly, to include both monetisable and non-monetisable costs and benefits, with due weight given to those that are non-monetisable.
29. As the option assessed in this IA are intended to allow judges to be deployed more flexibly to deal with existing demand, it is not expected that there will be significant monetised costs or benefits.

### **Option 1**

#### **Option 1a - Make Recorders judges of the Upper Tribunal**

##### **Costs of Option 1a**

30. It is unlikely that this legislative measure will involve significant costs, as it is intended to allow Recorders with existing experience to be deployed to the Upper Tribunal to cover business need. Therefore we do not anticipate that there will be significant training required.

##### **Benefits of Option 1a**

31. As this section will allow a greater range of judicial office holders to hear cases in the Upper Tribunal, this legislative measure will allow more scope for judicial resources to be deployed there in order to meet any increases in demand, and greater speed and efficiency in disposal of cases.
32. This measure could also benefit the judges concerned by allowing them to build a wider range of experience and enhance their career prospects.

#### **Option 1b - Enable judges of the High Court to be appointed as a judge-arbitrators**

##### **Costs of Option 1b**

33. As requests for arbitration under section 93 of the Arbitration Act 1996 are in areas where the judge in question already holds expertise, it is not expected that this legislative measure will result in the demand or provision of additional training. Therefore, no additional costs are anticipated.

##### **Benefits of Option 1b**

34. This legislative measure will allow a greater range of High Court judges to be deployed to conduct judicial arbitrations under section 93 of the Arbitration Act 1996. This is particularly significant for the Chancery Division of the High Court, where any future rise in the number of cases requiring arbitration could potentially cause delays or backlogs if the required judicial resource is not available.

35. Being better able to meet demand for arbitration cases may also increase the ability of UK to remain competitive as a centre for arbitration internationally.

### **Option 1c - Expand the range of courts and tribunals in which Deputy High Court Judges appointed temporarily can sit**

#### **Costs of Option 1c**

36. We do not anticipate any costs associated with this legislative measure.

#### **Benefits of Option 1c**

37. This legislative measure will allow the LCJ to appoint a Deputy High Court judge on a temporary basis to address an urgent business need in a wider range of courts and tribunals than currently available. This could potentially avoid cases having to be disrupted or re-listed in an emergency (e.g. unexpected sickness absence) and the associated costs of this.

38. This measure will provide a benefit of increasing the speed and efficiency in disposal of cases.

### **Option 1d: Enable senior Employment Tribunal judges to be appointed to the First tier and Upper Tribunals**

#### **Costs of Option 1d**

39. We do not anticipate any costs associated with this legislative measure.

#### **Benefits of Option 1d**

##### *HMCTS and the Judiciary*

40. This legislative measure will expand the SPT's ability to delegate certain judicial functions to the employment judiciary. The authority to delegate functions will enable tasks to be undertaken at the most appropriate level and will help to deliver a more efficient tribunals service. The potential for cross-deployment to the First-tier Tribunal and Upper Tribunal could also help to ease backlogs in these jurisdictions, where appropriate.

41. This legislative measure will provide benefits by increasing the speed and efficiency in disposal of cases in the employment tribunals and Employment Appeal Tribunal, and potentially also in the First-tier Tribunal and Upper Tribunal.

### **Option 1e: Make an amendment to the Lord Chancellor's power to amend certain judicial titles**

#### **Costs of Option 1e**

42. We do not anticipate any costs associated with this legislative measure.

#### **Benefits of Option 1e**

43. This amendment of power will correct an anomaly preventing these judicial titles from being amended by Ministerial Order, thus bringing them in line with other judicial titles and allowing more efficient changes of title when required.

### **Option 1f: Make it permissible for a chamber president of the Upper Tribunal, or the First-tier Tribunal, to also be appointed as chamber president of another chamber in the same Tribunal**

#### **Costs of Option 1f**

44. We do not anticipate any costs associated with this measure.

## **Benefits of Option 1f**

45. The legislative measure will give the Senior President of Tribunals greater flexibility in managing the leadership of the Tribunals, and to maintain leadership when a vacancy arises, without having to immediately recruit and appoint a new chamber president.
46. Ensuring that all chambers have an appropriate leadership judge in post will assist with the smooth running of the chamber to the benefit of all users of the chamber.

## **Option 1g: Appoint senior employment judiciary to the First-tier and Upper Tribunals**

### **Costs of Option 1g**

47. We do not anticipate any costs associated with this measure.

### **Benefits of Option 1g**

48. This measure adds the President of the Employment Tribunal (England and Wales) and the President of the Employment Tribunal (Scotland) to a list of judges who are members of the Employment Appeal Tribunal. It will make sure that the Employment Appeal Tribunal is able to make use of their extensive experience and expertise in determining complex employment law cases, and will bring the provisions into closer alignment with that which applied to the First-tier Tribunal and Upper Tribunal.

## **Option 1h: Change the title of Chief Bankruptcy Registrar to that of Chief Insolvency and Companies Court Judge**

### **Costs of Option 1h**

49. We do not anticipate any costs associated with this measure.

### **Benefits of Option 1h**

50. This amendment of title will bring the judicial title of the Chief Insolvency and Companies Court Judge in line with the judges that the individual has leadership responsibilities for, as well as in line with the name of the court itself, providing clarity for court users.

## **F. Assumptions, Risks and Sensitivity Analysis**

### **Assumptions**

51. The following assumptions have been made as part of completing this IA:
  - It is assumed that the current Recorder pool have the existing skills and knowledge to be deployable to the Upper Tribunal.
  - As the power to appoint Deputy High Court Judges on a temporary basis is intended to be used in limited circumstances where there is an immediate business need that cannot be addressed by other means (for example to cover a sickness absence), we have assumed volumes would be low. We do not anticipate that there will be training needs since the judge would only be deployed to jurisdictions with which he or she was familiar and would need to be deployed at very short notice.
  - It is assumed that judges of the Employment Tribunal will not be requested to sit in the Unified Tribunal or Employment Appeal Tribunal unless there is sufficient capacity to hear cases without compromising the business of the Employment Tribunal.

### **Risks and Sensitivities**

52. We do not anticipate that there will be any significant risks associated with the above legislative measures.

53. However, if the first assumption described above is not appropriate, Recorders may have to undertake training. The primary costs for this training would be the cost of the Recorder’s time and travel & subsistence, though this might vary based on, for example, the number of people the training was delivered to or the location. The table below shows how these costs might vary with the number of judges impacted by the proposed reforms.

**Sensitivity 1 – Annual training costs for Recorders to sit as Upper Tribunal Judges**

	Annual volume of Recorders to train as Upper Tribunal Judges		
	3	5	10
Daily Rate of Recorder	£1,851	£3,035	£6,070
Travel & Subsistence	£150	£250	£500
<b>Total</b>	<b>£2,001</b>	<b>£3,285</b>	<b>£6,575</b>

**G. Wider Impacts**

54. In line with our Public Sector Equality Duty (PSED) responsibilities we have prepared an equality statement that should be read in conjunction with this IA. On the basis of the available data and evidence we do not consider that the legislative measures contained in the Act are likely to result in any unlawful discrimination and are likely to be of benefit to court users, the judiciary and staff.

55. We have considered the implications for Welsh language in the development of the Act and published a summary of our proposals on the Government’s website.

**H. Enforcement and Implementation**

56. Implementing these legislative measures will largely follow existing processes e.g. for deploying judges to the Upper Tribunal or appointing a judge as a judge-arbitrator. We will consider the need for putting safeguards in place to make sure that these measures do not bypass the principles of fair and open competition for judicial roles, for example by using expression of interest exercises to advertise opportunities.

**I. Business Impact Target and One in Three out status**

57. These legislative measures do not meet the definition of regulation under the Small Business, Enterprise and Employment Act 2015 and so are out of scope of the regulatory framework. These measures do not count toward the business impact target nor qualify for the One-In Three-Out burden reduction incentive.