Title: Reform of the Employment Tribunal System **IA No:** BIS019(C)-16-LM **RPC Reference No:** N/A **Lead departments:** Ministry of Justice, Department for Business, Energy and Industrial Strategy.	**Impact Assessment (IA)** **Date:** February2017 **Stage:** Final **Source of intervention:** Domestic **Type of measure:** Primary legislation **Contact for enquiries:** labourmarket.consultations@beis.gov.uk

Summary: Intervention and Options

RPC Opinion: GREEN

Cost of preferred option (impacts enabled by primary and secondary legislation only)				
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**
£26.13m	-£0.53m	£0.1m	In scope	Qualifying provision

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

The Government is taking forward a radical programme of reform to tribunals. It aims to support citizens to present their own cases simply and to obtain justice more swiftly; to reduce complexity in language, process and systems; to reduce the costs of the tribunal system to taxpayers. For most tribunals this can be delivered within existing powers in the Tribunals, Courts and Enforcement Act (TCEA) 2007 but Employment Tribunals (ETs) and the Employment Appeal Tribunal (EAT) operate under a different legislative framework. The current restrictions in the primary legislation mean that wider changes will be needed to make sure that ETs and the EAT can be brought fully into line with the plans for the wider reformed justice system, and make sure that the legislation governing procedural matters in ETs and the EAT is sufficiently flexible to deliver any future reform needs.

What are the policy objectives and the intended effects?

Building on the use of modern technology systems, processes will be fundamentally changed to create a tribunal system that is able to respond promptly, effectively and proportionately to the needs of its different users. The overarching principles are that decisions made by our judges and the outcomes of cases must be regarded as ***just*** by all parties while the justice system must be ***efficient*****,** in order to save people time, costs, and reduce the impact of legal proceedings on their lives with ***simple***, procedures that are intelligible to non-lawyers. It has three basic building blocks: *Simplification* – simplified language, procedures and tribunals structures, and removing unnecessary differences between practice across the justice system; *Innovation* –new methods of handling disputes, including new pathways for dispute resolution, more active judicial case management and online legal help; and, *Technology* – to wholly digitise the process and facilitate alternative resolution routes, including virtual hearings and online dispute resolution.

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

The Government has considered two options:

Option 0: Reform of ETs and the EAT would involve digitisation only.

Option 1: Digitisation plus reform of the Employment Tribunal Act (ETA) 1996 to increase procedural flexibility and responsibility for procedural matters will be brought in line with that for other tribunals.

The Government has concluded that Option 0 would not deliver all the improvements in user experience and system efficiency required. Option 1 will provide the necessary level of structural change needed to deliver the fundamental reforms and is the Government's preferred Option. In Option 1 the primary legislation would facilitate the full reform of ET and EAT processes using Statutory Instruments.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** Between 2023 and 2025.

Does implementation go beyond minimum EU requirements?		No		
Are any of these organisations in scope?	**Micro** Yes	**Small** Yes	**Medium** Yes	**Large** Yes
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)		**Traded: N/A**	**Non-traded: N/A**	

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

Signed by the responsible Ministers: Margot James ***Date:*** 22/02/2017

Contents

Summary: Analysis & Evidence

Option 0- do minimum

Description: Reform of the employment tribunals and the EAT driven by Government investment in digitisation and requiring minimal legislative change.

FULL ECONOMIC ASSESSMENT (of primary legislation and subsequent secondary legislation)

Price Base Year 2016	PV Base Year 2018	Time Period Years 10	Net Benefit (Present Value (PV), legislative impacts only) (£m)		
			Low: 0	**High:** 0	**Best Estimate:** 0

COSTS (£m) Legislative impacts only	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	3	Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate	0.0		0.0	**0**

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

Costs related to reforms driven by Government investment in digitisation: Total transition costs to Government are estimated to be £24.3m. Ongoing costs to Government are estimated to be approximately £2.6m per year from 2022/23, comprising information and communications technology (ICT) costs, call centre and other assisted digital costs and contact centre costs.

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

None identified.

BENEFITS (£m) Legislative impacts only	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/a		N/a	**N/a**
High	N/a		N/a	**N/a**
Best Estimate	0.0		0	**0**

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

Benefits related to reforms driven by Government investment in digitisation: Benefits to users are anticipated to come via two main channels: savings in the costs and time travelling to and from hearings due to greater use of virtual hearings and online case management; and through the use of automation and digital technology in the court process, therefore removing paper, which will create smoother and more efficient hearings. In sum, these are estimated to be approximately £0.5m for claimants and £1.7m for employers per year, once the reforms are fully in place. Government benefits are anticipated through estate savings (£6m per year from 2021/22), judicial savings (£5m), admin (£3m) as well as other channels (£0.1m).

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

None identified.

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

All costs and benefits presented for this Option derive from efficiency measures driven by Government investment in digitisation and subject to minimal legislation. Analysis is based on our current understanding of what the future changes would be, as informed by the fundamental principles of reform stated as policy objectives above. All estimates are based on the assumptions that there will be no significant changes in claim numbers or in the fee structure. The estimates for numbers of cases to be heard online are based on a 2014/15 case mix – there is a risk that the case mix could change. We assume that there will be a reduction in time spent at hearings of all types due to efficiencies of using digital technology.

BUSINESS ASSESSMENT (of reform following option 0, legislative impacts only)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: 0.0	**Benefits: 0.0**	**Net:** 0.0	0.0

Option 1

Description: Reform of the Employment Tribunal Act 1996 to increase procedural flexibility and responsibility for procedural matters will be brought in line with that for other tribunals.

FULL ECONOMIC ASSESSMENT (of primary legislation and subsequent secondary legislation)

Price Base Year 2016	**PV Base Year** 2018	**Time Period Years** 10	**Net Benefit (Present Value (PV), legislative impacts only) (£m)**		
			Low:	**High:**	**Best Estimate:** 26.13

COSTS (£m) Legislative impacts only	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	3	Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate	0.5		0.5	**5.0**

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

We have monetised costs related to the Employment Tribunals (ETs) for ET users and for the Government. In addition to the costs resulting from Option 0, there will be modest costs relevant to the Business Impact Target, namely a cost to legal professionals to familiarise themselves with the new ET processes of £0.5m. The familiarisation costs to employers and individuals are currently considered to be negligible given the constantly changing pool of users participating in ETs. Ongoing costs to government, related to caseworkers, would be around £0.6m per year from 2022/23.

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

Costs related to the Employment Appeal Tribunal (EAT) have not been monetised. However, we anticipate these to be around 5% of the total (legislation and efficiency) costs for ETs, given the volume of appeals heard in the EAT. Full digitisation in the EAT would require legislation.

BENEFITS (£m) Legislative impacts only	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/a		N/a	**N/a**
High	N/a		N/a	**N/a**
Best Estimate	0.0		3.7	**31.1**

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

We have monetised benefits related to the Employment Tribunals (ETs) for ET users and for the Government. In addition to the benefits resulting from Option 0, ongoing benefits to government, related to judicial savings, would be around £4m per year from 2021/22, owing to the use of caseworkers and changes to panel composition.

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

Benefits related to the EAT have not been monetised. However, we anticipate these to be around 5% of the total (legislation and efficiency) benefits for ETs, given the volume of appeals heard in the EAT. Full digitisation in the EAT would require legislation.

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

The primary legislative change of creating enabling powers is not currently anticipated to have direct cost or benefit implications for the Government or users of the ET and EAT. All costs and benefits presented in this assessment are those of anticipated subsequent reforms which are enabled by the powers given in the primary legislation (and delivered via secondary legislation) or derive from efficiency measures driven by Government investment. Analysis is based on our current understanding of what the future changes would be, as informed by the fundamental principles of reform stated as policy objectives above.

All estimates are based on the assumptions that there will be no significant changes in claim numbers or in the fee structure. The estimates for numbers of cases to be heard online are based on a 2014/15 case mix – there is a risk that the case mix could change. We assume that there will be a reduction in time spent at hearings of all types due to efficiencies of using digital technology.

BUSINESS ASSESSMENT (of reform following option 1, legislative impacts only)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: 0.1	**Benefits: 0.0**	**Net:** -0.1	0.5

Evidence Base (for summary sheets)

A. Problem under consideration

1. Tribunals were created to provide simple, proportionate routes of redress for individuals to challenge decisions of the state, public bodies and employers that affect their civil and regulatory rights. Tribunals were designed to be more accessible and informal than the courts to enable users to prepare and present their cases without legal representation. They are an integral part of the delivery mechanisms for decision making departments and their effectiveness in dealing with disputes speedily and proportionately will play a critical part in supporting the delivery of the Government's wide ranging reforms to tax avoidance, the immigration system and welfare. However, tribunals have not kept pace with changes in society or, in particular, with the way that users want and need to interact with our systems.

2. Tribunals need reform to support citizens to present their own cases simply and to obtain justice more swiftly; to reduce complexity in language, process and systems; and to reduce the costs of the tribunal system to taxpayers. In general, tribunal buildings around the country are out-dated and underused. Overwhelmed by paper and routine administration, the internal workings of the tribunal system are increasingly out of place in the internet age with aged information and communications technology (ICT) and complex and bureaucratic processes that place a heavy burden on citizens preparing and presenting their own cases. There is considerable scope for achieving greater proportionality in the way that all tribunal cases, including those issued in Employment Tribunals (ETs) and the Employment Appeal Tribunal (EAT)[1] are resolved, which will reduce those burdens through simplifying and streamlining our processes, using judicial time more effectively, and reducing the reliance on paper processes and physical hearings, particularly for more straightforward cases.

3. Uniquely, following the transfer of the ETs and the EAT to the Tribunal Service (now Her Majesty's Courts and Tribunal Service) in 2006, the Department for Trade and Industry (now Business Energy and Industrial Strategy (BEIS)) has retained responsibility for the rules and governance of ETs as well as the overarching policy framework for ETs and the EAT. Responsibility for making changes to the regulations which determine procedural matters within ETs continues to rest with BEIS ministers who make changes to regulations to address specific policy issues, including those that may be raised in consultation with stakeholders.

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

B. Rationale for intervention

5. The conventional economic rationale for Government intervention is based on efficiency or equity arguments. Government intervenes if there is a perceived failure in the way a market operates ("market failures") or if it would like to correct existing institutional

[1] The Employment Appeal Tribunal (EAT) is a superior court of record whose primary role is to hear appeals from Employment Tribunals in England, Scotland and Wales on a point of law only. It also hears appeals from decisions of the Certification Officer and the Central Arbitration Committee and has original jurisdiction over certain industrial relations issues.

distortions (“government failures”). Government also intervenes for equity (“fairness”) reasons.

6. The Government would like to correct existing institutional inefficiencies which are leading to inefficiency within ETs and the EAT. Antiquated processes are costly for both the Government and users of ETs and the EAT, including businesses.

7. Working with the senior judiciary, the Government has concluded that continuing gradual iterative reform of the justice system based on individual jurisdictions will not be sufficient to deliver the level of change needed, either in terms of delivering the system-wide improvements needed by users or the reduced costs needed to make sure that the system delivers justice in a proportionate and sustainable way. Instead it is seeking to take forward a radical and ambitious programme of transformational reform that applies common design features and principles across the whole of the justice system.

8. It will be possible to implement the planned reforms across most tribunals through existing powers under the Tribunal, Courts and Enforcements Act (TCEA) 2007 in consultation with the Tribunal Procedure (Rules) Committee (TPC). However, the current powers governing procedural matters in ETs and the EAT are contained in the Employment Tribunals Act (ETA) 1996 and would limit the Government’s ability to reform ETs and the EAT along the lines of the rest of the tribunal system in some respects, for example, in respect of the increased delegation of work from judges to caseworkers and the flexibility to make ICT changes to forms and systems quickly. In addition, responsibility for making procedural rules, delegating judicial functions and changing tribunal panel composition (“procedural matters”) in ETs and the EAT currently rests with the Secretary of State for BEIS for ETs and the Lord Chancellor for the EAT, under the terms of the ETA 1996. Reliance on another department to deliver necessary changes in ETs would limit the ability of the Lord Chancellor as the Minister responsible for the administration of ETs from being able to guarantee the delivery of changes in these areas in a way and at a time they are needed. Wider changes will, therefore, be needed to make sure that ETs and the EAT can be brought fully in line with the plans for the wider reformed justice system and make sure that the legislation governing procedural matters in ETs and the EAT is sufficiently flexible to meet future reform needs.

C. Policy objective

9. The Government is investing over £1 billion to transform the courts and tribunals system. Rather than simply creating an improved version of the current system, the tribunal reforms, generally, are aimed at fundamentally changing systems and processes. The transformed tribunal system will be built around the use of modern technologies to make sure that we have a court and tribunal system that is able to respond as promptly, effectively and proportionately to the needs of its different users. It will be a court and tribunal system that proactively helps people to navigate their way to the best resolution for them; uses the simplest language, process and systems; has the minimum number of steps possible that people need to go through to obtain justice; and improves access to justice.

10. A common set of reforms will be applied across the civil and family courts and tribunal system. Applying these reforms across the tribunal system the Government intends to:

    - Digitise the end-to-end claims process, facilitating online interaction between the parties and the tribunal, simplifying the process, speeding up the resolution of disputes and allowing users to engage with the tribunal at times and locations convenient to them;

- delegate routine tasks from judges to HMCTS caseworkers, including general case management decisions according to judicial pre-set criteria – allowing judges to focus on those matters where their legal expertise and knowledge is needed, speeding up the resolution of disputes;

- provide the senior judiciary with greater flexibility in setting panel composition. Specifically, the Senior President of Tribunals would be required to specify whether a tribunal panel will consist of one, two or three members, based on the matters to be determined by the tribunal and the need for expertise, knowledge or skills to enable it to do so. This will enable panel composition to be more easily tailored according to the specific needs of users and the complexities of the case, streamlining the handling of cases whilst continuing to ensure that the tribunals' decisions are fair and informed;

- remove any presumption that a particular type of case must be determined by a specific form of hearing, allowing cases to be resolved through a range of different media, including online and video-conferencing according to the needs of the specific dispute and the individual user, speeding up the resolution of disputes and allowing users to engage with the tribunal at times and locations convenient to them providing a more tailored approach for individual cases.

11. The intention is that these reforms will be implemented on a rolling programme across the tribunal system on an iterative basis, starting with the Social Security and Child Support (SSCS) tribunal. Using lessons from the SSCS tribunal to refine the detailed proposals, the programme will be rolled out across other tribunals encompassing ETs and the EAT amongst the last of the major tribunal to be reformed.

12. As part of the transformation process, the MoJ will use provisions in the Prisons and Courts Bill to ensure that established practice relating to court and tribunal proceedings will apply to virtual hearings. These cover enabling the public to view open hearings and prohibiting unauthorised recording and transmission of court and tribunal hearings. The impacts of this legislation are considered in the Prison and Courts Bill: Virtual Hearings and Open Justice impact assessment (MoJ002/2017).

13. While the aims and fundamental building blocks of reform remain the same across all tribunals, the actual detail of changes to procedure in an individual tribunal is likely to vary, depending on the matters being considered by each tribunal and the needs of the users in each jurisdiction. So while the SSCS tribunal, for example, will apply the same reforms as in ETs, the extent to which different elements of reform will apply and affect the day-to-day delivery of the service may be different to the way that they affect users in ETs.

Consultation – 5 December 2016 to 20 January 2017

14. BEIS and MoJ carried out a seven week consultation on the proposed transformation of ET and EAT, which concluded on 20 January. The consultation sought views on the proposed reforms, such as digitisation, handling cases online, delegation of judicial functions to caseworkers and changing panel composition and the proposed changes to the legislative framework underpinning the ET system to facilitate their delivery. It also asked about potential impacts on small businesses and potential equality impacts. There were seventy-six responses, including responses from legal representatives, the judiciary, employer representative organisations, trade unions, businesses, charities and individuals. Overall, the responses were broadly in favour of the reforms, though some responses raised issues such as the extent of delegation to caseworkers, the need for additional representation on the TPC to put forward the users' perspective and to make sure that support around digitisation was sufficient. Respondents also felt that it was

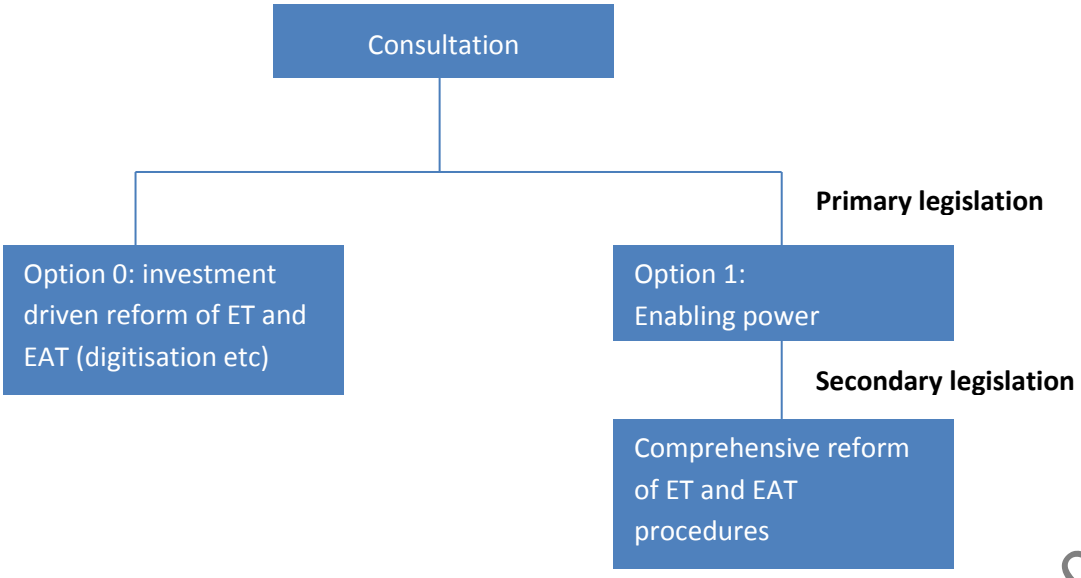
important that options to use a paper based approach and to have in-person hearings remain.

15. There will be further engagement with stakeholders on proposals for the reform of ETs and the EAT as the programme rolls out, particularly in relation to the development of any changes to the current procedural rules that may be necessary to support the operation of the reformed system.

D. Description of options considered

16. Option 0 sets out the changes that are driven by the Government's digitisation programme across the courts and tribunals system. This involves some minimal legislation, to ensure that the existing practices of the public's right to view open hearings and the prohibition on recording or transmitting tribunal proceedings are applied to virtual hearings. These reforms will be applied to ETs, and the EAT where possible, as part of the broad reforms of the tribunal system. Option 1 involves substantive changes to primary legislation, the ETA 1996 to transfer responsibility for procedural rules in ETs and the EAT to the TPC. This is to ensure that ETs and the EAT can be brought in line with the plans for the wider reformed justice system and that the legislation governing procedural matters in ETs and the EAT is sufficiently flexible to deliver any future reform needs. The overarching reform principles set out above indicate the direction of subsequent reforms that would then be delivered through secondary legislation or straight-forward operational improvements (which would be carried out even if the primary legislation were not changed). Our current understanding is that the impacts on users would substantially be the result of the operational improvements. The secondary legislation to introduce new procedural rules by the TPC, related to delegation of routine judicial tasks to caseworkers and revised panel composition, would be given effect by way of statutory instruments. These would be preceded by appropriate consultation and engagement with stakeholders to assess the likely impacts and, where necessary, would be accompanied by relevant, specific impact assessments. For clarity, this simplified, two-stage process is illustrated in Figure 1.

Figure 1: Simplified Flow Diagram Illustrating the Two Stage Process of Implementing the Reform Programme



17. We have based the analysis presented here on our current understanding of what future reforms are likely to entail.

Option 0: Do minimum - Reform of ETs and the EAT driven by Government investment in digitisation)

18. MoJ would be able to increase the digitisation of ETs, which would allow virtual and online hearings to take place where possible. Some digitisation of the EAT, in terms of online communications, would also be undertaken. This would build on the significant improvements which have been made to the operation of ETs (for example, in the context of online applications with around 90% of all ET claims being issued in this way[2]). Only minimal legislation, ensuring that existing practices in tribunal hearings will be applied to virtual hearings, will be needed. This increased digitisation is the minimum reform that Government wants to carry out on the ET and EAT system, and would in itself result in efficiencies for both users and government. These reforms will be carried out as part of the wider £1 billion reforms of the tribunal system; therefore the impact of legislative change (option 1) has been assessed against the counterfactual of this "do minimum" option.

19. The Secretary of State for BEIS and the Lord Chancellor would continue to be responsible for procedural matters in ETs and the EAT, respectively. As now, the existing fee setting powers in section 42 of the TCEA 2007 would continue to apply to cases in ETs and the EAT.

20. However, without the change in the ETA 1996 to transfer responsibility for procedural matters to the TCP, the powers underpinning the ET system would continue to lack the flexibility available elsewhere in the justice system, limiting the potential scope of reforms that might be deliverable. For instance, the ability to use caseworkers in some aspects of case handling, and for the more flexible use of panel members across the Employment Tribunal system would be hampered. Likewise, additional legislation would be required to enable the EAT to hold virtual hearings.

[2] Gov.UK, Employment Tribunals dashboard. https://www.gov.uk/performance/make-a-claim-to-an-employment-tribunal. Accessed 20 June, 2016. Data for 2 to 8 May, 2016.

21. ETs and the EAT are already significantly out of sync with other tribunals and the civil court system (for example, in relation to the delegation of functions to suitably qualified staff, which is a feature of operations across other tribunals and the civil courts). The effect of not reforming ETs and the EAT in line with the reforms being applied across the rest of the justice system would be to entrench those differences. This would include inefficiencies in the ET and the EAT systems, resulting in an unnecessary cost to the taxpayer.

Option 1: Reform of the ETA 1996 to increase procedural flexibility and responsibility for procedural matters will be brought in line with that for other tribunals

22. This option would involve primary legislation to amend the relevant provisions of the ETA 1996 to make sure that when reforms are implemented across the rest of the tribunal system under the powers in the TCEA 2007, the governing procedural powers in the ETA would be flexible enough to implement all of these reforms in a way that is appropriate to the needs of users of ETs and the EAT. While some reforms would be straight forward even without the legislative change, others such as the use of caseworkers would not. As is already the case in the unified tribunals system, responsibility for procedural matters would be conferred on the independent TPC and the Senior President of Tribunals (SPT), as relevant.

23. HMCTS will implement the reform programme across the tribunal system on a rolling programme that will make sure that the reforms are applied to each tribunal based on the experiences of users elsewhere and the specific needs of the users of the individual tribunal. User engagement will be a fundamental part of this approach and they will therefore be integral to design of the reforms to ETs and the EAT and in determining how the wider reform principles should apply in the employment context. However, this does mean that it is not currently possible to be precise about how a particular employment dispute or type of employment dispute would be resolved in the reformed system. It would only be at the stage when the reform programme is being rolled out to ETs and the EAT using learning from other tribunals and following a detailed analysis of the specific needs of users of ETs and the EAT that the specific requirements would become clear. Where relevant, these reforms would be considered in any impact assessments accompanying any statutory instruments implementing new procedural rules.

24. As is currently the case with all other tribunals managed by HMCTS, the Secretary of State for BEIS, would continue to be responsible for employment policy and the role of ETs and the EAT in supporting that policy. However, the rule making powers in the ETA 1996 would be amended to align them with those applicable in the rest of the justice system to ensure that they provide sufficient flexibility to make sure that the reform design principles can be appropriately applied to ETs and the EAT. Responsibility for making ET and EAT rules would be conferred on the existing independent TPC. The membership of the TPC would be amended to reflect the committee's new responsibilities, adding additional members with specific employment expertise to make sure that stakeholders' views are appropriately considered in making new rules for ETs and the EAT.

25. The TPC is an umbrella body that makes rules governing procedure for a range of different tribunals, including the SSCS Tribunal, the Mental Health Review Tribunal and the Lands Tribunal which deal with a wide range of diverse disputes. In making procedural rules the TPC already needs to make sure that the specific user requirements of each tribunal are reflected as appropriate and has the power to co-opt external expertise to support the development of rules where necessary.

26. The current rule making powers provided under the TCEA 2007 are sufficiently wide to implement the planned reforms across tribunals in the unified system. Bringing the rule making provisions for ETs and the EAT in line with those applicable to tribunals in the unified system would make sure that they are sufficiently flexible to make any necessary changes to procedural rules for ETs and the EAT when the reform programme is implemented in those tribunals without further amendment to the ETA 1996. The TPC is required under paragraph 28(1)(a) of Schedule 5 to the TCEA 2007 to undertake appropriate consultation before making tribunal rules. Whilst the TPC would be making rules for ETs and the EAT under the separate amended provisions in the ETA 1996 the same requirements to undertake appropriate consultation would still apply. Taken in conjunction with the proposed changes to the membership of the TPC, this would ensure that stakeholders and users would have an enhanced involvement in the process. Statutory instruments are required to introduce tribunal rules made by the TPC and are subject to approval by the Lord Chancellor. Full digitisation in the EAT would require legislation.

27. The existing provisions in the ETA 1996 governing panel composition would be amended. The intention is to ensure that the Lord Chancellor is responsible for setting panel composition, and would discharge that duty by providing for it to be determined by the SPT. Therefore, the SPT would be responsible for determining the future composition of panels in the ET and EAT based on the same requirements as apply to tribunals within the unified system. Following the recent, separate, consultation on proposed changes to those requirements[3] the Government has announced that it intends to proceed with removing the existing requirement for the SPT to have regard to the panel composition that existed prior to a tribunal being transferred into the unified system. This will allow the SPT to determine panel composition based on the needs of the cases and users that are currently using the tribunal system and its users, rather than basing decisions on the historic arrangements for those tribunals. Instead the SPT would be required to specify the number of members of a tribunal panel having regard to the matters to be determined by the tribunal and the need for expertise, knowledge of skills to enable it to do so. Following the implementation of this change the SPT would have the option of exploring the potential for greater and more flexible utilisation of the specialist resource provided by non-legal members across the tribunal system. Under the reforms, the SPT would specify panel composition by way of a Practice Direction (PD) following consultation with the Lord Chancellor. A similar approach would be taken in respect of panel composition in ETs and the EAT.

28. Section 2(3) of the TCEA 2007 sets out specific considerations that the SPT must have regard to when exercising his functions. They consider the need for tribunals to be accessible, fair and handled quickly and efficiently, for tribunal members to be specialists in the law or subject matter of the tribunal, and to develop innovative methods for resolving disputes. The same requirements would apply to decisions on panel composition in ETs and the EAT which will make sure that necessary expertise is available on each tribunal panel.

29. As now, the existing fee setting powers in section 42 of the TCEA 2007 would continue to apply to cases in ETs and the EAT.

E. Preferred option (including description of implementation plan)

[3] Transforming our justice system: summary of reforms and consultation. https://consult.justice.gov.uk/digital-communications/transforming-our-courts-and-tribunals

30. The Government has identified that the current provisions within the ETA 1996 are not sufficiently broad and flexible to provide the necessary certainty for all the changes that are likely to be needed as a result of the implementation of the reform programme to ETs and the EAT. It is satisfied that Option 1 would permit it to transform ETs and the EAT in accordance with the approach being taken across the remainder of the justice system and deliver all of the current monetised benefits identified for ETs. Option 1 is, therefore, the Government's preferred option.

31. It is expected that any changes to provide the flexibility required to introduce the reform package to ETs and the EAT would be taken forward as part of the planned Prisons and Courts Bill which is expected to be introduced in February 2017.

Monetised and non-monetised costs and benefits

32. As set out above, the basic reforms that would be applied across the tribunal system have already been set but the extent to which specific reforms would affect the day to day operations of ETs and the EAT has yet to be decided. The precise detail will only become clear as the reform programme is extended to ETs and the EAT in due course. The recently concluded consultation was the starting point in engaging with stakeholders, and there will be further involvement of stakeholders in shaping the reforms as the programme develops.

33. The primary legislative change of creating enabling powers is not currently anticipated to have direct cost or benefit implications for the Government or users of ETs and the EAT. All costs and benefits presented in this section are those of anticipated subsequent reforms, which are enabled by the powers given in the primary legislation and which would be delivered via secondary legislation, or which represent efficiency gains not dependent on legislation. Full digitisation in the EAT would require legislation.

34. Government transition costs would take place over the period 2018/19 to 2020/21 inclusive. As set out in the 'Options' section, HMCTS would implement the reforms in ETs and the EAT taking account of lessons learned from the roll out of the reforms in other tribunals, and the specific needs of the users of ETs and the EAT. Change would therefore be incremental, determined by when the investment and related change takes place. Initial calculations assume that ongoing costs and benefits to Government would reach a steady state (100%) in 2022/23, with costs building up to this in the preceding years.

35. We assume that benefits to users would follow a similar pattern, and our estimates of how these are calculated are based on annual benefits when the steady state has been reached.

36. While the reforms represented by option 1 will apply to both ETs and the EAT, the following analysis examines the impacts on ETs only. We have focused on ETs because these represent the bulk of the work of the two tribunals and, therefore, account for the majority of the impacts. For example, in 2015/16, while the ETs handled 18,243 cases, comprising 83,032 single and multiple claims, the EAT received only 970 appeals[4]. On the basis of these volumes, one might expect the impacts on EAT to be about 5% of the total impacts (legislation and efficiency) on ETs under option 1. Further work would be required to refine this estimate, based on a careful consideration of how the reform principles would apply to the particular type of work handled by the EAT. Full digitisation in the EAT would require legislation so scope for impacts in EAT under option 0 are limited.

37. Throughout, we have distinguished reforms that require "substantive" legislation (relating to delegation and panel composition) from those which can proceed largely under existing powers (relating to better use of technology) with minimal legislation related only to making it a criminal offence to record virtual hearings. For the purpose of registering the impact of legislation, only the "substantive" reforms feature in the summary figures on page 1 as these qualify as regulatory provisions within the Better Regulation Framework.

[4] Ministry of Justice, Tribunals and gender recognition certificate statistics quarterly: January to March 2016, June 2016.

The other impacts are detailed here to convey the full ambition of our reform programme in ETs and the EAT.

Option 0

Option 0: Do minimum - Reform of ETs and the EAT driven by Government investment in digitisation

38. Option 0 would have the impacts from a minimum reform package for ET and the EAT, which would not require the change to the ETA 1996, save for making it a criminal offence to record virtual hearings. All the costs and benefits under option 0 relate to the digitisation of processes and do not include any reform to delegation of judicial work or panel composition.

Costs (ETs only)

Users

Transition costs

39. Most employers and employees are rarely involved in the employment tribunal system. In each of 2014/15 and 2015/16, the two complete years since the introduction of fees in ETs, there were slightly over 18,000 cases received in ETs, although some cases (multiples) can involve a number of claimants[5]. There were around 1.19 million employers in 2015[6], and around 25.8 million employees[7] in Great Britain. This suggests that around 2% of employers and well under 1% of employees might be involved in a tribunal claim in a particular year. For the minority that are, it is expected that they would familiarise themselves with rules and procedures of ETs when the employment claim takes place. Therefore, there should not be any additional transition costs arising, as parties to claims would need to go through the same familiarisation process, but with the new, rather than current, rules and guidance.

Ongoing costs

40. We do not model any intangible change relating to the perceived quality of the process in ETs. The Government's reform programme aims to create a court and tribunal system that is able to respond promptly, effectively and proportionately to the needs of its different users. These reforms are intended to bring notable benefits in terms of user experience.

41. As outlined in more detail in the 'Risks and assumptions' section, the reform programme currently under consideration is not anticipated to cause a notable change in the number of cases heard in ETs and so the number of employers and individuals involved in ETs is not expected to change due to these reforms.

42. The rebalancing of the various costs of communication are the only potential ongoing cost to business identified in ETs at this stage.

Communication costs

[5] Ministry of Justice, Tribunals and gender recognition certificate statistics quarterly: January to March 2016, June 2016 – there were 83,032 claims in 2015/16, (including around 66,000 multiple claims relating to 1,257 cases).

[6] BIS, Business Population Estimates 2015, October 2015, this publication estimates that there are 1.19 million employers with 2 or more employees in Great Britain in 2015. Firms with 1 employee can comprise an employee director which is less relevant for ETs.

[7] ONS, Labour Market Statistics, May 2016.

43. As noted above, the reforms would look to resolve cases through a range of different media, including physical and online hearings, reflecting the needs of the specific dispute and individual user. This would also involve a move to more online documentation of cases. This would change from the current system, which tends to revolve around face-to-face hearings and meetings, and is heavily paper based.

44. The 2013 Survey of Employment Tribunal Applications (SETA) gives respondents' median reported communication costs (the cost of postage and phone calls) of participating in an ET to be £20[8]. Users of the system would find that their interactions with the employment tribunal system change, for example through greater use of online or telephone communication in place of attendance in person and the posting forms/documents. The additional use of telephone and internet communication channels poses a potential increase in cost to business, although this would be counteracted by the reduced need to incur postage costs.

45. SETA does not provide a breakdown of the specific elements of cost included in the respondents' estimate of communication costs. A significant proportion of employers and individuals already have broadband phone and internet infrastructure in place[9]. Most have a pre-paid, regular phone and/or broadband package with a significant amount (or unlimited) usage included. These employers and individuals are likely to benefit from the increased flexibility and use of new technology to facilitate administration and resolution of cases heard in ETs. Around 90% of claims issued in ETs are currently started online[10].

46. The reforms would be flexible, taking account of what approach is suitable for the specific dispute and individual. For those without access to internet technology, this may mean that face-to-face hearings remain the most appropriate way to conduct a hearing. Alternatively, as set out in the recent response to the Transforming our justice system consultation, HMCTS will have in place an Assisted Digital programme to support claimants and respondents who are not self-sufficient in digital technology, to help them to take advantage of the digital options offered. This programme will be developed as MoJ rolls out its reforms across the Courts and Tribunals Service. Possibly a small minority of employers and claimants going through tribunal will pay for some additional phone and internet usage if they partake in a virtual tribunal hearing following the reforms. However, again, additional costs for scanning documents to those employers and individuals without scanning facilities[11] would be mitigated by the reduced need to incur postage costs.

47. We have not monetised any potential costs arising from the move to digitised processes and online communication and hearings. This is because the MoJ reforms allow for the development of approaches that are suitable for users without free access to technology, so it is not clear that additional costs will arise. Also, it is likely that any additional communication costs arising would be matched by reduced costs for current forms of communication, such as postage costs.

48. We anticipate that the overall change in spending on communication would be small (especially in the context that communication costs represent a small fraction of the total

[8] The survey does not ask businesses for their estimated communication costs but this figure is considered to be broadly representative of communication costs to each party.

[9] ONS, E-Commerce and ICT Activity 2014, November 2015. This shows that 82% of businesses (including micros) had a fixed broadband connection in 2014, with 47% having 3G or 4G mobile connection. Ofcom reports that in Q1, 2015 80% of adults had broadband access, and 93% used a mobile phone (the rates are higher among the working age population) Ofcom, Facts and Figures http://media.ofcom.org.uk/facts/ [Accessed 10th June 2016]

[10] Gov.UK, Employment Tribunals dashboard. https://www.gov.uk/performance/make-a-claim-to-an-employment-tribunal. Accessed 20 June, 2016. Data for 2 to 8 May, 2016.

[11] Rymans quote a figure of £2.50 for scanning a 1 page document and £0.50 for subsequent pages http://www.ryman.co.uk/scanning [Accessed 10/06/2016],

costs of participating in a tribunal hearing[12]), and, given the lack of accurate, detailed data on the communication costs involved at this stage of policy development, assume that any net change would be negligible.

Summary of users' costs

49. The familiarisation costs to employers and individuals are currently considered to be negligible given the constantly changing pool of users participating in ETs. There is a potential change in the ongoing composition of communication costs, although we expect there would be some balance between any additional costs in use of digital technology and a reduction in postage costs. Whether there is a net cost or benefit to users would depend on the extent to which reforms to ETs take account of individuals' and employers' access to technology when devising the new procedures – and the MoJ's Assisted Digital programme is intended to provide free support to those not self-sufficient with digital technology.

50. We have not monetised any ongoing costs to employers or individuals. We would expect any communication costs due to the move to digital technology to be marginal.

Government

51. Reforming ETs will create both transition costs and on-going costs. These would enable the implementation of the reform programme and the savings that are produced from it.

Transition costs

52. The main transition costs to Government when reforming ETs would be programme costs, estates transition costs and ICT set-up costs.

53. Programme costs cover the costs associated with the delivery of the programme. They have been calculated for ETs as the sum of expected staff costs, recruitment costs, legal, external specialist costs, training costs for delivering the new operating model and programme staff travel costs.

54. Estates transition costs would arise as a result of any works required to prepare closed tribunals for disposal, such as decommissioning costs and transferring work from tribunals listed for closure. Estates transition costs in ETs have been calculated as the sum of expected disposal costs, dilapidations, lease exit payments, decommissioning aged ICT, and decant and porterage costs.

55. The ICT costs are both resource and capital costs. They would arise from the creation of a new online portal, virtual technology, call centre IT, system upgrades and automation throughout the tribunal process to make services more efficient. The ICT costs in ETs have been estimated for a core capability team to develop new digital services, provide support to in-service applications and deliver on-going systems improvements. The HMCTS Reform Programme's technology team engaged with a wide range of subject matter experts within HMCTS Digital Change Directorate, MoJ Technology, the HMCTS Design Team and other HMCTS project teams to capture the current baseline view, plans for projects already in progress and potential solutions to meet the capability gaps identified. These costs would be refined as and when detailed programme and project plans are refreshed in line with the expected roll out of reform of ETs and the EAT. Our current expectation is that this would take place towards the end of the current spending

[12] See Table A7 on page 32 of the Early Conciliation Final Impact Assessment: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284042/bis-14-585-early-conciliation-impact-final.pdf [accessed 26th July 2016].

review period and that this information would feed into any impact assessments required as a result of any necessary changes to the procedural rules for ETs and the EAT.

56. ICT transition costs have not been modelled directly for ETs, only for Civil, Family and Tribunals (CFT) as a whole, assuming similar transformation across all jurisdictions. The percentage of savings that ET reform is expected to produce as a proportion of all CFT savings is applied to the total CFT transition costs to provide ET transition costs.

57. Total transition costs to Government of option 1 are estimated to be around £24m. These costs arise primarily from better use of technology. They are not, therefore, dependent on legislation.

Ongoing

58. The main ongoing costs once ETs have been reformed would be ICT costs, assisted digital and call centre costs.

59. In order to run and maintain the new portal and automation through the tribunal process there would be business-as-usual (BAU) ICT costs. The ICT costs have been estimated for a core capability team to develop new digital services, provide support to in-service applications and deliver on-going systems improvements. Ongoing ICT costs have been estimated in a similar way to the transitional ICT costs as described above.

60. ICT BAU costs have not been modelled directly for ETs, but only for Civil, Family and Tribunals (CFT) reform as a whole. The percentage of savings that the ET reform is expected to produce as a proportion of all CFT savings has been applied to the total CFT ICT BAU costs to provide ET-specific ICT BAU costs.

61. Around 90% of claims issued in ETs are currently started online[13], indicating that the majority of previous applicants have had some digital capability. However, as the system becomes more digitally focused it is recognised that not all applicants would have the capability to access the online services. To ensure access to justice for all there would be various 'Assisted Digital' (AD) provisions put in place, which would provide support for those with little or no digital capability. For example, some applicants may require a third party to complete the form with them or to complete the process on paper. The MoJ has consulted separately on proposals around AD provision[14].

62. AD costs for ETs have been calculated by identifying the percentage of cases issued in ETs which would require assistance; this figure was then split with 50% assumed to require a third party (such as the Citizen's Advice Bureau (CAB)) and the other 50% completing the process on paper. These assumptions came from the User Experience team but will be subject to review in the light of any evidence collected from the wider court reform consultation currently underway as well as any information provided as part of this consultation. The third party volume was then multiplied by a high-end unit cost benchmarked against the HMCTS contract with the CAB for helping victims and witnesses for court processes and procedures and, therefore, provides an upper bound to costs for those using a third party. For those completing the process on paper, cost was calculated by multiplying the paper volume by the number of pages expected per case and the unit cost.

63. AD costs have not been modelled directly for ETs, but only for CFT as a whole. The percentage of savings that ET reform is expected to produce as a proportion of all CFT

[13] Gov.UK, Employment Tribunals dashboard. https://www.gov.uk/performance/make-a-claim-to-an-employment-tribunal. Accessed 20 June, 2016. Data for 2 to 8 May, 2016.

[14] Transforming our justice system: summary of reforms and consultation. https://consult.justice.gov.uk/digital-communications/transforming-our-courts-and-tribunals

transformation savings has been applied to the total CFT assisted digital costs to provide ET assisted digital costs.

64. For those digitally competent but with procedural queries, a call centre or call centres would be available. Call centre costs in ETs have been calculated from information provided by the HMCTS User Experience Team, who have drawn upon management information and operational experience regarding the number of calls expected per case and assuming the length of these calls. This time has then been costed against a regional HMCTS Band E salary with some management uplifts.

65. Total ongoing costs of option 0 from ICT costs, assisted digital and call centre costs, all related to reforms driven by Government investment in digitisation could be around £2.6m per year from 2022/23, where 2022/23 is the 'steady state'.

Benefits (ETs only)

Users

66. Reducing the reliance on physical hearings would bring business savings in the form of reduced time and cost of travel. There would be further benefits to businesses in the expected increase in efficiency of tribunal proceedings themselves, which are also analysed in this section.

Reduction in travel cost

67. Firstly, this sub-section considers the reduced spending on travel to and from hearings. There would be a reduction in the reliance on physical hearings at all stages of an ET: case management hearings, preliminary hearings, final hearings and costs/remedy hearings.

68. The Survey of Employment Tribunal Applications (SETA) 2013 asked claimants for an estimate of the costs of travel incurred as a result of the ET case. Unfortunately, the corresponding question was not also asked to respondents although, given there is no reason for the location of a tribunal hearing to be closer to either party (respondent or claimant), we assume that the costs to businesses of travelling will be comparable to the claimants' estimates[15]. The average travel cost figures in SETA do not break the cost down into the mode of transport or the cost individual journeys being taken, although it can reasonably be assumed that bulk of the necessary travel costs will be those to get to and from hearings (either case management, preliminary, final or costs/remedy).

69. To get an estimate of the cost of each journey to and from a hearing, we make use of SETA breakdowns of travel cost by claim outcome. We compare these travel costs for those cases that proceed to a final hearing with those that are 'dismissed/other', as claims that are dismissed or have a default judgement are predominantly resolved largely without recourse to a hearing. This enables us to estimate the proportion of travel costs that are related to travelling to a hearing. Comparing the mean travel cost for claimants with claims that are 'dismissed/other' to those which reach a final tribunal, the cost increases by £28 (£83 compared to £55[16]). The mean in this instance is considered more

[15] Note the same assumption is applied later in this section in relation to the proportion of parties that incur travel costs because this question was also asked to claimants but not respondents. Furthermore, we recognise that more than one attendee may attend on the respondent side, however, this would also be the case for claimants and therefore this should be factored into the travel cost estimates provided by claimants. It is also possible that multiple attendees can share private transport to the hearing venue hence further reducing any potential disparity in travel costs due to the number of attendees in either party. The lack of further detail on the travel costs incurred limits the extent we can explore these potential cost differences at this stage.

[16] SETA 2013, Table 6.3. SETA separates claims that were successful at hearing to those that were unsuccessful. To get a weighted travel cost estimate for all that proceed to hearing, we apply the average proportion of hearings that were successful at tribunal (51.6%) compared to those that were not (48.4%) using HMCTS outcome data for the most recent available four quarters (Q4 2014/15 to Q3 2015/16).

accurate as it covers the full range of journeys undertaken (businesses travelling from all regions). We therefore take £28 to be an approximation of the additional cost of travelling to a final hearing (given the relative rarity of cost/remedy hearings that might be also included in this difference)[17].

70. The median final hearing lasts a single day[18]. Therefore £28 is taken as an approximation of the cost of travelling to and from any single hearing in person for those that incur travel costs[19].

71. In the two full years following the introduction of ET fees, there was an annual average of around 18,300 ET cases received[20]. Of these, around 54% underwent case management procedures, 18% underwent preliminary hearings, 6% went to a cost/remedy hearing and 36% underwent final hearings, according to HMCTS management information (N.B. these types of hearing are not mutually exclusive activities; they occur at different stages in the ET process). We use HMCTS management information to estimate the proportion of cases in ETs going to final hearing by case type, no track (2%), fast track (41%), standard track (34%) and open track (23%). Fast track cases tend to be simpler, often relate to monetary issues like unpaid wages and have a shorter listing window. Standard track cases are slightly more complicated, must contain an Unfair Dismissal or related jurisdictional complaint and have a longer listing window. Open track cases are the most complicated, must include a discrimination or disclosure type jurisdictional complaint and have no listing window. These open track cases are usually reviewed by a judge in a case management or preliminary hearing before being listed. No track cases are where no relevant jurisdictions have been identified.

72. Currently, we estimate that 55% of case management procedures in ETs result in a face-to-face hearing[21], and, based on management information, that all preliminary, cost/remedy and final hearings are face-to-face.

73. The MoJ has modelled the potential change in allocation between the methods of conducting a hearing, taking account of the complexity of cases (as indicated by the track system). The moves to virtual hearings and dealing with the case through e-mail or online case management will give the estimated future proportions shown in Table 1.

Table 1: Proportion of ET Cases in Future Going through Each Hearing Process, by Different Routes

Procedure	Online/e-mail	Virtual	Face-to-Face
Case management		100%	
Preliminary hearing		80%	20%
Cost/Remedy hearing		90%	10%
Final hearing: No track	66%	17%	17%
Final hearing: Fast track	66%	17%	17%
Final hearing: Standard track		50%	50%
Final hearing: Open track		50%	50%

[17] There are currently around 16,000 final hearings compared to around 1,000 remedy/cost hearings.

[18] SETA 2013 Table 6.11.

[19] Only a minority (31%) of claimants incur travel costs at all and the £28 cost estimate is generated from this sub-sample of survey respondents. It is therefore only a cost estimate for those that incur travel costs; an average travel cost to/from a hearing for all respondents (including those that do not incur travel costs) is generated by multiplying £28 by 0.31. We take this to be representative for the majority of hearings, although recognise that a minority (27%) of final hearings currently last two or more days (SETA Table 6.11).

[20] Tribunals and gender recognition certificate statistics quarterly: January to March 2016, Table 1.2.

[21] Evidence from the Manchester Employment Tribunal showed that in May 2016 45% of Case Management procedures were carried out over the phone.

74. Applying the £28 average travel cost estimate, factored down by the proportion of individuals that incur travel costs (31%) and the proportion of employers that attend hearings (84% for final hearings[22] and assumed to also be 84% for all other hearing types as no data is available), to estimates of the change in face-to-face hearings gives total cost savings to employers of £0.1 million and to claimants of £0.12 million in ETs. The savings in travel costs by type of hearing are summarised in Table 2.

Table 2: Savings in Travel Cost to Claimants and Employers, by Type of Hearing in ETs

Procedure	Reduced travel cost: claimants (£000s)	Reduced travel costs: employers (£000s)
Case management hearings	48	40
Preliminary hearings	23	19
Cost/remedy hearings	8	7
Final hearings	37	31
Total	117	98

Reduction in travel time

75. The previous sub-section monetised the direct costs to business of travel that are avoided by a reduction in in-person hearings in ETs. This section monetises the additional saving for businesses in the form of the time saved due to no longer needing to travel.

76. The estimated change in the number of face-to-face hearings in ETs given in Table 1 can be combined with average travel time estimates to estimate the benefit to business of time saved. MoJ have recently developed a travel time model to accompany impact assessments around proposals on the provision of court and tribunal estate in England and Wales[23]. The model assesses travel times from the centre of each Lower Super Output Area (LSOA; areas defined by the Office of National Statistics that mostly contain 1,000-2,000 people) to the nearest tribunal[24]. This modelling gives an estimated average travel time of 52 minutes for all journeys to the nearest tribunal[25]. We do not have sufficient regional data on the location of employers involved in ETs in order to adjust this modelling to reflect the location of businesses involved. Bearing in mind what is proportionate at this stage of policy development, we therefore consider the travel time of claimants to be a reasonable approximation of the travel time for employers.

77. Total travel time savings have been monetised for ETs by multiplying the fall in the number of face-to-face hearings by the average travel time estimate (52 minutes) and then by the average wages of senior managers and human resource managers/directors uplifted by non-wage costs (as presented in Table 3). We assume that where an employer attends a hearing, a director or senior manager will always do so, and an HR manager would do so for two-thirds of hearings[26].

Table 3: Wages and labour costs estimates

[22] SETA 2013 Table 6.10.

[23] See here: https://www.gov.uk/government/consultations/proposal-on-the-provision-of-court-and-tribunal-estate-in-england-and-wales.

[24] Further explanation of the model can be found in the impact assessment to accompany the Proposal on the provision of court and tribunal estate in England and Wales, as referenced in the previous footnote; specifically from paragraph 72 of the impact assessment onwards.

[25] This comprises an average travel time of 44 minutes for those that travel by car and 115 minutes for those that travel by public transport.

[26] SETA 2013, table 6.7 identifies that the median time spent by all staff on an ET case is 5 days, while for directors or senior managers it is 3 days. We therefore consider that for other staff, 2 days are spent – which is two-thirds of the time of a director or senior manager.

	Median gross hourly wages excluding overtime (ASHE 2016)	Median hourly labour costs[27]
Chief executives and senior officials	£43.62	£52.43
Human resource managers and directors	£23.68	£28.46
All employees	£12.10	£14.54

78. We also take account for the proportion of employers that attend hearings in ETs – 84% for final hearings[28] and assumed also to be 84% for all other hearing types as no data is available. For claimants, the value of time spent travelling is considered to be equal to the median hourly wages of all employees, as a proxy for the opportunity cost of the claimant's time. A summary of the value of the time saved, by type of hearing, is given in Table 4.

Table 4: Savings in Travel Time for Claimants and Employers, by Type of Hearing in ETs

Procedure	Value of reduced travel time: claimants (£000s)	Value of reduced travel time: employers (£000s)
Case management hearings	57	285
Preliminary hearings	28	137
Cost/remedy hearings	10	50
Final hearings	45	223
Total	140	695

79. In summary, we anticipate that reduced travel time will save claimants £140,000 and employers £695,000.

Efficiency savings at hearings

80. As a result of fewer face-to-face hearing and more virtual and online hearings which are more efficient, the average time spent at tribunal is expected to fall. This is partly due to the expectation that all hearings will benefit from the increase of automation and digital technology in the ET court process (therefore removing paper), which would create a smoother and more efficient hearing.

81. The reduced time that would be spent at hearing by directors and other staff in ET cases is equivalent to the value of the same employees' time that would otherwise be spent on other tasks in the business. For claimants, the wage of the median employee is used as a proxy for the opportunity cost of their time. For employers, we use the median wages for HR staff and senior managers and directors, uplifted by non-wage costs, to monetise the value of this time. MoJ have estimated potential efficiency gains in reduced time for different hearings (see the risks and assumptions section), which we are using as our best estimates. To take account of the uncertainty around the best estimate of the likely efficiency gain, we have applied a range around the estimate, as explained further in the risks and assumptions section.

82. The range of estimated benefits to claimants and employers in ETs are given in Table 5. Paragraph 142 in the assumptions sections explains the derivation of the low, best and high estimates for these benefits to users.

[27] Labour costs are estimated by taking the median hourly wage figure and uprating by 20.2%, the estimated UK figure for non-wage labour costs as a percentage of wages based on Eurostat 2015 data.

[28] SETA 2013 Table 6.10.

Table 5: Savings from reduced Hearing Time for Claimants and Employers, by Type of Hearing in ETs

Procedure	Value of reduced hearing time: claimants (£000s)			Value of reduced hearing time: employers (£000s)		
	Low estimate	Best estimate	High estimate	Low estimate	Best estimate	High estimate
Case management hearings	0	23	29	0	114	149
Preliminary hearings	0	12	23	0	59	118
Cost/remedy hearings	0	4	8	0	19	39
Final hearings	0	153	186	0	738	949
Total	0	191	246	0	930	1,256

83. In summary, the central estimates anticipate that reduced hearing time will save claimants £191,000 and employers £930,000 in ETs.

Additional efficiencies throughout tribunal process (not monetised)

84. Administrative tasks such as requesting updates on case progress, completing forms and submitting documentation would be simplified and more accessible to parties via an online platform. This would reduce the time spent by claimants and respondents on these tasks and hence reduce the overall time burden of participation for parties.

85. There may be further time saved throughout the ET process due to automation and efficiencies in the HMCTS administrative processes. This would likely reduce the time parties need to spend interacting with HMCTS to obtain updates on the case or receive a response to straightforward questions (such as hearing time/location). Related to this, there may be a reduction in unnecessary processes due to cases being allocated to the most proportionate resolution route, and signposting to alternative dispute resolution (ADR) through the online portal may allow cases to be directed to a more proportionate resolution process. These gains could achieve further reductions in the time, cost and stress for parties participating in a tribunal.

86. There is currently very limited evidence on which to base any monetisation of these additional gains to business that may result and they have not been monetised at this stage. These potential benefits can be explored further through discussions with experienced practitioners.

Summary

87. Table 6 summarises the estimated annual benefits to ET users once the steady state is reached in 2022/23. The assumptions behind the high and low estimates are set out in the risks and assumptions section below (paragraph 142).

Table 6: Summary of Benefits to ET Users

	Claimants			Employers		
	Low estimate	Best estimate	High estimate	Low estimate	Best estimate	High estimate
Hearing efficiencies	£0.00m	£0.19m	£0.25m	£0.00m	£0.93m	£1.26m
Saving in travel time	£0.14m	£0.14m	£0.14m	£0.70m	£0.70m	£0.70m
Saving in travel costs	£0.12m	£0.12m	£0.12m	£0.10m	£0.10m	£0.10m
Total	**£0.26m**	**£0.45m**	**£0.51m**	**£0.79m**	**£1.72m**	**£2.05m**

88. In the three years prior to 2022/23, we expect the benefits would only partially be realised, in line with MoJ projections, reflecting the expected phased implementation of the reforms from 2019. This is illustrated in Table 7.

Table 7: Pattern of Benefits to ET Users up to 2022/23

	2019/20	2020/21	2021/22	2022/23
Claimants (best estimate)	£0.27m	£0.44m	£0.45m	£0.45m
Employers (best estimate)	£1.02m	£1.70m	£1.72m	£1.72m

Government – Monetised

Estates

89. Government estates benefits would derive from the efficiencies associated with more widespread use of digital technology, particularly at the hearing stage.

90. Under option 0, the increase of automation and digital technology in the court process is assumed to create a smoother and more efficient hearing. Additionally, there would be a shift away from the conventional hearing format. Based on what is most appropriate, a hearing may take one of three formats, face-to-face, virtual or online. A face-to-face hearing would be held in a physical court room, as now, but where participants may or may not join proceedings via a video link. A virtual hearing would be one held with all the parties joining remotely via telephone or video link. An online hearing would not be held in real time and the decision would be made 'on the papers'.

91. The shift away from the conventional format would reduce time and cost, whilst simplifying access for professional users. Estates savings would arise because more hearings can take place per day and fewer would require a physical court room, allowing for workload to be redistributed and some hearing centres to be closed.

92. Estates savings for ETs were calculated as the reduced future running costs in staff costs, ICT costs, utilities, property maintenance and other office expenditures of the closed tribunals. Total estates benefits for ETs are expected to be around £6m per year from 2021/22, based on evidence from previous court closure programmes.

Judicial

93. There would be judicial benefits in ETs resulting from the increased digitisation of the hearing and tribunal processes.

94. The use of virtual and online hearings, where appropriate, would provide efficiencies. Virtual hearings would reduce time and cost, whilst simplifying access for professional users. Additionally, digitisation would create smoother and more efficient hearings, benefitting from the increase of automation and digital technology throughout the tribunal process.

95. To calculate judicial benefit in ETs due to digitisation, we have multiplied the volume of hearings in 2014/15 by the time each type of hearing takes and the judicial cost of that time. This has been compared with the time each type of hearing is assumed to take in the future, and the volume associated with each type of hearing, again multiplied by judicial fees and salaries. On average, it is expected judicial hearing time would be reduced by 34%.

96. Judicial benefits resulting from digitisation are estimated to be around £5m per year from 2021/22.

Administrative staff

97. Initial case assessments and automation are the two main factors contributing to administrative benefits in ETs.

98. Initial case assessments would lead to administrative savings as cases would be allocated to the most proportionate resolution route and unnecessary processes would be eliminated.

99. Initial case assessment benefits in ETs have been calculated by identifying tasks in the initial case assessment category which would not exist post-reform but are currently completed by administrative staff. The volume of these tasks is multiplied by the time the tasks take and the cost of the staff completing the task.

100. Automation in ETs would create savings in case registration, case preparation and at the resolution stage. Automation of case preparation would allow for standard approaches to be adopted across HMCTS and would support the proportionate deployment of administrative staff and judges in the management of cases. This reduction in manual processing could also reduce delays, increase transparency and increase accuracy. There would also be some automation of the resolution process. Court clerks would be required for less hearing time as hearings would be more efficient and administrative staff would only be involved with producing short automated judgements.

101. Excluding initial case assessments, admin benefits due to automation in ETs have been calculated by multiplying the volume of tasks in all categories, by the administrative minutes attributable to each task (based on 2014/15 volumes and current timings) and the wages and on-costs of administrative staff. This is then compared with the assumed future process by multiplying task volumes to the new admin minutes and applying administrative costs.

102. Administration benefits resulting from reform are estimated to be around £3m from 2021/22.

Other

103. Other benefits attributable to ETs would result from reduced staff travel and subsistence costs and reduced printing, postage and stationery costs. These have been calculated by comparing costs currently spent on these items with those that would be spent with the expected number of staff post-reform and the volume of administrative tasks not automated or online. Such benefits are estimated to be around £0.1m from 2021/22.

104. Total ongoing monetised benefits in ETs to Government of option 0 are estimated to be around £14m per year from 2021/22.

Government – Non-monetised

105. Sign posting to Alternative Dispute Resolution (ADR) would be simplified and made available through the online portal so users would be able to make an informed decision before making an application to the Tribunal. Such accessible early engagement would offer a more proportionate resolution and help to ensure only those who cannot resolve their issue through any other means go through the Tribunal process. However, as ADR signposting is already a mandatory feature of ETs, in which ACAS has a statutory role[29], we expect minimal impact.

Summary of Option 0

106. Transition costs to Government are estimated to be around £24m. Ongoing costs to Government in ETs are estimated to be approximately £2.6m p.a. from 2022/23. Monetised ongoing benefits are estimated to be around £14m p.a. from 2021/22.

107. There are not estimated to be any transition or ongoing costs to users.

108. The central estimates of the steady state ongoing benefits to users resulting from the digitisation reforms are estimated to be £0.45 million for claimants and £1.72 million for employers.. Prior to the steady state, we estimate that only proportions of these steady state benefits, in line with the MoJ estimates of benefits to Government, would be achieved. There are relatively minor incremental improvements from 2020/21 to 2022/23. These are set out in Table 8 below.

Table 8: Benefit to ET users from reform package set out in Option 1, £ millions

	2019/20	2020/21	2021/22	2022/23
Claimants (best estimate)	£0.27m	£0.44m	£0.45m	£0.45m
Employers (best estimate)	£1.02m	£1.70m	£1.72m	£1.72m

109. As noted, these costs and benefits exclude the EAT but, based on volumes alone, the costs and benefits attributable to the EAT are likely to be modest, perhaps 5% of the total for ETs and probably less because much digitisation in the EAT would require legislation not included in option 0.

[29] It is a statutory requirement (included in the ET rules) that an ET claimant must notify Acas that they have a dispute and consider Early Conciliation (EC), although there is no obligation on either party to go through with it. EC can be engaged with and continued throughout the duration of the claim.

Option 1

Option 1: Reform of the ETA 1996 to increase procedural flexibility and responsibility for procedural matters will be brought in line with that for other tribunals.

110. Option 1 would have the impacts summarised above for Option 0, which estimate the costs and benefits arising from the minimum reform package for ET and the EAT, which would not require the change to the ETA 1996, save for making it a criminal offence to record virtual hearings. In additional we expect the following estimated costs and benefits to result from reforms linked to substantive change to the ETA 1996 related to delegation of judicial work and revision of panel composition.

Costs (ETs only)

Users

Transition costs

111. Employment lawyers, who may expect to regularly be representing claimants and/or employers in cases heard in ETs, may need to familiarise themselves with the changes introduced by the reforms. It is difficult to estimate the number of employment lawyers from official data. However, we assume that there are around 6,000 employment lawyers, as this is around the membership of the Employment Lawyers Association[30]. The median hourly wage excluding overtime of a legal professional is £25.17 (ASHE 2016), and according to Eurostat figures for 2015, non-wage labour costs are around 20.2% of wage costs in the UK. Therefore the estimated hourly labour cost of a legal professional's time is £30.25. We assume that it will take an employment lawyer three hours to familiarise themselves with the changes, and the MoJ would aim to set out new guidance as clearly as possible to users as part of their Agile approach. This time estimate is based on the length of regular ACAS 'Employment Law Update' sessions which impart information on a range of recent and upcoming changes to employment law[31]. The proposed changes to rules outlined here are further reaching than other recent employment law changes and so we anticipate that familiarisation will take experienced practitioners up to 3 hours. This can be in the form of private study rather than in-person training, therefore without the need to incur additional cost. This leads to an estimate of around £545,000 for the cost of familiarisation for employment lawyers (6,000 x 30.25 x 3).

112. While some of the training lawyers are expected to undertake will relate to adapting to new digital working, for the purpose of assessing impacts of legislation we count training under legislation-related costs.

Ongoing costs

113. We do not model any intangible change relating to the perceived quality of the process in ETs. The Government's reform programme aims to create a court and tribunal system that is able to respond as promptly, effectively and proportionately to the needs of

[30] Employment Lawyers Association, About ELA http://www.elaweb.org.uk/content/about-ela [Accessed 10th June 2016]

[31] ACAS, 'New employment law and updates': http://www.acas.org.uk/index.aspx?articleid=3301 [Accessed 6th July 2016]

its different users. These reforms are intended to bring notable benefits in terms of user experience.

114. Some responses to the consultation identified the potential that some users of ET may face additional costs due to the potential for a greater number challenges arising from caseworkers taking over some of the management of cases. However, as noted below, the caseworkers will be overseen by the judiciary so any caseworker action that isn't straightforward should have judicial approval. It therefore isn't clear to what extent additional challenges would arise. This risk will need to be monitored and assessed as part of the delivery of this specific reform. At this stage we have not monetised any costs resulting from additional challenges.

Summary of users' costs

115. The familiarisation costs to employers and individuals are currently considered to be negligible given the constantly changing pool of users participating in ETs. There would be a cost to legal professionals to familiarise themselves with the new processes in ETs of £545,000, which we count as a legislation-related cost.

116. We have not monetised any ongoing costs to employers or individuals. It isn't clear at this stage in policy development that additional challenges would result from caseworker decisions.

Government

117. In addition to the Government costs identified under option 0, option 1 would carry further ongoing costs only. Option 1 would involve costs associated with the preparation and passage of primary legislation; however, these are assumed to be business-as-usual resource costs.

Ongoing costs

118. The ongoing costs arising from legislation are caseworker costs.

119. As part of the reforms there would be an introduction of caseworkers employed by HMCTS. Caseworkers would complete a range of tasks, with oversight from the judiciary, from certain case management to providing legal orders, according to their grade. They will not make the final decisions in any case. Some examples of tasks which have been assumed to transfer to caseworkers are initial consideration, case management hearings, dismissals, postponements witness orders and withdrawal requests. This transfer of tasks would require secondary legislation. To provide costs for caseworkers the volumes of the allocated tasks were multiplied by anticipated minutes taken. Total time has been converted to Full Time Equivalent (FTE) years and then multiplied by a representative salary, provisionally taken to be a regional HMCTS Band B salary.

120. Caseworkers have already been employed in the Tax, Mental Health, SSCS, Immigration Asylum Chamber and Criminal Injuries Compensation Tribunal. In each of these tribunals, tasks completed by caseworkers differ slightly but some examples include preparing referrals to judges, notification of withdrawals, invalid or late appeals, strike outs, witness summons, issuing standard directions, giving consent, preliminary issues and postponement requests.

121. Caseworker costs are estimated at £0.6m per year from 2022/23.

Benefits (ETs only)

Users

122. The primary benefit that users of ETs and the EAT would be expected to get from the use of caseworkers to carry out some functions (with judicial oversight) would be a potential shortening in the length of time it takes to complete a case. Caseworkers may be able to process decisions and progress the case at a faster rate than achieved currently, as their work will be concentrated on these functions. This benefit is primarily intangible, in reducing the time that users have the case hanging over them, rather than a reduction in the work needed to make or respond to the claim. We have not monetised this potential benefit.

Summary

123. There are no estimated additional benefits to users arising out of reforms linked to Option 1.

Government – Monetised

Judicial

124. Judicial benefits in ETs linked to the changes to the ETA 1996 would have two main drivers, the increased use of caseworkers and changes in panel member composition.

125. Caseworkers would help to reduce waiting times for a final decision to be made as they could relieve judges of some of their current tasks. This would provide judges more availability for hearings, enabling a speedier process. Judicial benefits due to the introduction of caseworkers in ETs have been calculated by identifying tasks which were previously completed by judges and are now to be completed by caseworkers. The total time of these tasks multiplied by judiciary hourly costs then provides the judicial benefit.

126. Caseworkers in ETs would also conduct initial case assessments, which enable case types upon entering the system to be allocated to the most proportionate route for resolution. This could reduce delay and cost through a reduction in unnecessary processes, and promote the use of virtual and online hearings, where appropriate.

127. Currently non-legal members (NLMs) support the judiciary at standard and open track hearings. After transformation, the initial assumption is that, whilst all cases could potentially be decided by a suitably qualified single member panel, i.e. a judge, this is not likely. The composition of ET panels is currently determined according to the provisions of the ETA 1996[32]. Under these the standard panel consists of a judge and two non-legal members but specific types of cases may be heard by a single judge sitting alone. The SoS for BEIS, following consultation with the Lord Chancellor, may determine that further types of cases may also be heard by a judge sitting alone subject to specified criteria. A single member in all cases is not considered to be realistic so the savings contributing to the judicial saving figure below have been modelled under the scenario that there is a 75% reduction in NLM sitting days. Savings due to panel member reduction in ETs has been calculated by establishing the current number of days worked by NLMs, multiplied by their daily fees and multiplied by 75%. However, this figure is for illustrative purposes only as the level of NLM sitting days will be entirely dependent on the arrangements put in place by the SPT.

128. As a result of the above factors, judicial benefits resulting from the reforms of the ETs linked to the change to the ETA 1996 under Option 1 are estimated to be around £4m per year from 2021/22.

Summary of Option 1

[32] See section 4 of the ETA 1996.

129. In addition to the estimated costs and benefits resulting from Option 0 , there would be ongoing annual costs of £0.6m from creation of the caseworker role, and annual benefits of £4m relating to caseworkers and changes to panel composition.

130. Transition costs for businesses in ETs are estimated to be £545,000, all of which is attributed to familiarisation with changes following legislation. There are not estimated to be any ongoing costs to users.

131. As noted, these costs and benefits exclude the EAT but, based on volumes alone, the costs and benefits attributable to the EAT are likely to be modest, perhaps 5% of the total (legislation and efficiency) for ETs. Full digitisation in the EAT would require secondary legislation.

Analytical notes

Rationale and evidence that justify the level of analysis used in the IA (proportionality approach)

132. As noted in the 'Options' section, the reforms set out under Option 1 would be implemented, where necessary, by new procedural rules introduced by the respective procedural rules committees. Procedural rules made by the TPC are given effect by way of statutory instrument and are preceded by appropriate consultation and engagement with stakeholders to assess the likely impacts and, where necessary, are accompanied by relevant specific impact assessments. The reforms would be implemented across the tribunal system in a way that would consider how they should be applied given the respective user needs in each tribunal.

133. Although the parameters within which the overall reform programme will operate, therefore, are known and have been used to identify likely costs and benefits, further work will need to be undertaken as the reform is extended to the employment jurisdiction to test and clarify the detailed impacts of this approach on the ET jurisdiction. It is currently anticipated that any reform of ETs would have minimal adverse impacts on users as the rules of procedure would be expected to remain in place as far as possible. We have not examined impacts on EAT. However, given the need to amend precise design based on feedback and the modest anticipated effect on users, a more detailed treatment would not be appropriate at this stage. The responses we have received to the consultation will be used to help inform the development of the reforms, which are still at an early stage.

Assumptions and risks

Key assumptions

134. The reform of tribunals and courts represents a radical departure from current practice so, inevitably, certain assumptions, such as the number of panel members required for hearings or the demand for assisted digital are subject to some uncertainty. The following assumptions represent the MoJ's best understanding of future ET function and have been developed through an extensive programme of design work involving consultation with the judiciary, regional HMCTS directors, local managers and case management information. Design principles which have been applied across the justice system have also been applied here.

135. Where costs have not been modelled specifically for ETs, these have been pro-rated based on the proportion of savings from ETs of all savings across the civil and family courts and Tribunals (CFT). For example, ICT set-up cost is only available for the reform of all CFT. The percentage attributed to ETs is the same percentage that savings from ETs represent as a proportion of all CFT savings.

136. All figures in relation to Government costs and benefits are in 16/17 prices, using 14/15 baseline volumes. Optimism bias of 15% has been applied as standard, except for IT transition capital costs, where a 35% optimism bias has been used, and for estates transition costs, where an 8% optimism bias was applied, based on experience with similar projects.

137. Caseworker salary is provisionally taken to be Band B; contact centre staff are Band E.

138. Tasks in which some of the volume has been assumed to transfer to caseworkers in ETs are initial case assessments, case management hearings, reconsidering applications, dismissals, Rule 21 judgements, postponements, applications for witness orders, processing decisions on witness order, adding/removing representatives, ACAS/private settlement and withdrawal requests, and reinstatements of applications.

139. It has been assumed that all case management hearings and 80% of preliminary hearings in ETs would be virtual (by telephone); around two thirds of short track and no-track final hearings would be online and will take around 80% less time than an oral hearing; around half of standard and open track hearing would be virtual.

140. The number of cases to be heard online is based on the 2014/15 ET case mix. There is a risk that the case mix could get more complicated and therefore fewer cases may be suitable for an online hearing.

141. For illustrative purposes, we have assumed there will be a 75% reduction in the number of panel member sitting days in ETs under option 1. In reality, this figure may be higher or lower.

142. There is anticipated to be a reduction in the time spent at hearings of all types in ETs due to efficiencies of using digital technology. The current best estimate of these potential efficiency gains, informed by experienced tribunal practitioners, is a gain of approximately 10% (19% for case management hearings). For costs to users, the lower bound estimate is that there would be no efficiency gain in hearing time and hence no benefit. To create a symmetric range, the upper bound estimate is of efficiency gains of 20% (25% for case management hearings). These are subject to revision following the consultation period and further discussions with informed stakeholders.

143. Under all options we have assumed volumes would remain at 2014/15 levels. This is based on the fees regime, and other parts of the dispute resolution system remaining unchanged. There were very similar numbers of case receipts in the two years following the introduction of fees. We are not able to accurately predict the state of the economy over the next ten years, or impacts from changes to employment law (which may also affect case numbers).

144. We have assumed that the current fee structure would remain.

Risks

145. The Government recognises that Non-Legal Members (NLMs) have an important role to play in providing important knowledge and expertise where this is not otherwise available to the tribunal. The intention of our new reforms is to be smarter and more flexible in the way that NLMs are used, moving away from the current blanket approach where they are called upon to sit as members of a three person panel as a matter of course but making sure that they continue to be used where they add value to the outcome of the case. Instead their deployment would become a matter for the SPT who would be required to make sure that they would continue to be used where their expertise is relevant to the outcome of the case but would be able to use them in alternative ways that permits their expertise to be provided in new, innovative ways which are compatible with the digitisation of the process, and the focus on continuous online engagement and interaction between the parties and the tribunal.

146. There is a risk to the modelling assumptions that digitising the front-end might encourage more claims. However, there already exists a statutory requirement to consider conciliation before a claim can be issued in ETs. Within this context, we believe that digitisation is not likely to have much impact on the propensity to claim – by the time the claimant reaches the tribunal, he or she has already invested considerable energy in

seeking to resolve the dispute without recourse to ETs. Additionally, around 90% of claims ETs are currently started online[33].

147. There is a risk that a reduction in the number of panel members may affect user outcomes or user perception in the fairness of the system in those cases.

148. Examples from the Immigration Asylum Chamber and ETs of previous reductions in the use of NLMs suggest this has not had an impact on user outcomes. In June 2014, the President and Resident Judges of the First Tier Tribunal agreed that non-legal panel members would no longer be routinely booked on all deportation first tier appeals. Following this reform, the proportion of appeals allowed/granted in deportation cases has not been notably affected with the proportions so determined standing at around 32% in 2012/13, 37% in 2013/14, 33% in 2014/15 and an average of 35% in the first two quarters of 2015/16. A further example is in ETs when, in 2012, the panel composition in unfair dismissal cases was changed so that they are ordinarily heard by a single judge. The proportion of unfair dismissal cases successful at hearing has not been notably affected at around 10% between 2007/08 and 2009/10, 8% in 2010/11, 9% in 2011/12, 8% in 2013/13 and 2013/14, and 11% 2014/15.

149. Whilst it is more difficult to measure user perceptions, tribunal judiciary are appointed on the basis that they have the appropriate inter-personal skills to enable them to compensate for the appellants' lack of skills or knowledge in relation to the tribunal process and assist them to participate effectively in the process. Alongside this, the tribunal judiciary are already appointed on the basis that they have appropriate expertise in the ET context with many judiciary in ETs also being practising employment lawyers. Taking this, the requirements on the SPT to make sure that specific expertise is provided where necessary and the statutory obligations on the SPT to ensure access to justice, we expect that the quality of the service received by users would not be affected.

Direct costs and benefits to business calculations

150. There are no direct monetised costs or benefits to business of the amendments to primary legislation that are being consulted on in options 1. The monetised impacts presented in this document arise from the anticipated subsequent changes using secondary legislation or efficiency measures that would be needed to deliver the reform programme. Presenting analysis of primary legislation conferring enabling powers in this way is in line with the Better Regulation Framework Manual guidance[34]. The Manual states, "…the overall impacts of the proposed measure (including both primary and secondary legislation) [should be] set out in the Impact Assessment at the primary legislation stage."

151. For the purposes of the summary figures on page 1 and the succeeding full economic assessment on pages 3 and 4, we have considered only impacts related to substantive legislation, primary or secondary. We assume that the transition costs to employment lawyers of £545,000 in ETs are all costs to business and are dependent on legislation. Ongoing costs to business are expected to be negligible. Benefits to business all derive from efficiency gains related to the better use of technology. They do not, therefore, feature in summary figures. The estimated equivalent annual net direct cost to business (EANDCB) of option 1 is £0.1m.

152. The estimated BIT score is £0.5 million.

[33] Gov.UK, Employment Tribunals dashboard. https://www.gov.uk/performance/make-a-claim-to-an-employment-tribunal. Accessed 20 June, 2016. Data for 2 to 8 May, 2016.

[34] Paragraph 1.1.15, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/468831/bis-13-1038-Better-regulation-framework-manual.pdf.

Small and Micro Business Assessment

Demographics of businesses involved in employment tribunals

153. Small and micro businesses are in scope of the proposed reforms. SETA 2013[35] finds that 27 cent of cases from the employer survey were from Micro employers (under 25 employees), eight% were Small (25-49 employees), 17% Medium (50-249 employees) and 47% Large (250+ employees). Small and Medium Enterprises (SMEs) therefore make up 53% of all cases. These findings are in line with those found when the survey was previously conducted in 2007.

154. The impacts are expected to be distributed broadly equally across employers involved in tribunal cases, so this demographic make-up is indicative of the distribution of potential impacts on businesses – which are positive for option 0 and option 1.

155. Given this demographic, we can assume that approximately 35% of the benefits calculated in the sections above would fall on small and micro businesses. For the central estimate of Option 0 (and Option 1), this would equate to an annual benefit of £0.6m (of total benefits to business of £1.72m, excluding the EAT).

156. There is a small transition cost for lawyers resulting from familiarisation with the legislative changes under Option 1. We do not have quantitative information available to assess whether employment lawyers are primarily located in small or micro businesses.

157. There are potential benefits to claimants and employers from the reforms in Option 1, from reduced duration of ET cases.

158. To further understand the likely impact on small and micro businesses, it is important to take account of how the reforms may affect businesses of varying sizes differently.

159. Some elements of the reforms proposed, relating to the introduction of online hearings and video conferencing, could differentially affect small and micro businesses if these businesses have peculiar levels of access to ICT (such as internet connections and scanning facilities). There is limited evidence on the extent that access to communication technologies varies by business size. Potentially, those with smaller premises and fewer employees may have less need for ICT. However, access to these facilities is likely to be more dependent on the businesses' industry and nature of work than businesses' size. For example, physically mobile businesses with no fixed premises may have limited ICT infrastructure. Furthermore, it was established in the communication cost to businesses section that 87% of all businesses (including micros) have access to the internet.

160. Importantly, the journey and interactions of business of all sizes through an employment tribunal will take account of what approach is most suitable for the specific dispute and parties involved. This would take account of the access that parties may have to specific ICT facilities, hence adapting to businesses of all sizes and characteristics. We hence anticipate there to be no disproportionate impact on small and micro businesses. It may be more likely that for small or micro businesses the business

[35] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/316704/bis-14-708-survey-of-employment-tribunal-applications-2013.pdf.

owner (or other primary decision maker of the business) would attend hearings in ETs and the EAT. As the reforms are estimated to reduce the time involved in hearings, and in travelling to and from hearings, then these businesses may gain slightly more from these reforms than large businesses, where it is less likely that the key decision maker would attend.

Mitigating impacts on small and micro businesses

161. Some respondents to the consultation on ET and EAT reform suggested that there may be an impact on some small and micro businesses due to a lack of technology, or due to the number of challenges by some claimants to caseworker decisions. Others thought that there would be some benefits to small and micro businesses due to digitisation.

162. MoJ carried out a consultation, which ran from 15 September to 10 November 2016, on its planned Assisted Digital programme. The response to that consultation was published on 8th February and sets out the steps that will be taken to ensure that users of tribunals who are not digitally self-sufficient will continue to be able to access the Courts and Tribunals system[36]. Therefore, for small and micro businesses (and claimants) who do not have the digital technology needed, the Assisted Digital programme should provide the support needed to use the digital options being developed as part of the reforms. The existing paper based and in-person option would continue to remain for those still unable to use the digital services following support from Assisted Digital.

163. MoJ and BEIS will take account of stakeholder views when considering the impact of digitisation and in developing the caseworker's role. There will be further opportunities for stakeholders, including small and micro businesses, to shape the policy as the reform programme progresses.

Family Test

1. The Government has considered the full checklist of questions which are included in the official 'Family Test: Guidance for Departments' document[37]. The purpose of the checklist is to "raise awareness of the aspects of family life and relationships that public policy can impact, generate insights through the process of addressing the questions, and recording anticipated impacts early in the policy making process." We have applied the checklist as a guide for the level of analysis that is proportionate.

2. Reduced need to travel for face-to-face hearings and the shorter duration of hearings of all types will give family members more time to spend together or to fulfil caring responsibilities. This would clearly benefit all families, and especially those families with childcare responsibilities or those that provide care for elderly or disabled family members.

3. The proposed legislative changes are not anticipated to impact upon family formation, families going through key transitions, families before/during/after couple separation or those most at risk of deterioration of relationship quality.

[36] MOJ, Transforming our justice system – Government response, February 2017, https://consult.justice.gov.uk/digital-communications/transforming-our-courts-and-tribunals/results/transforming-our-justice-system-government-response.pdf

[37] Available here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/368894/family-test-guidance.pdf.