 Regulatory Policy Committee	Opinion	
Impact Assessment (IA)	Reforms to Judicial Review	
Lead Department/Agency	Ministry of Justice	
Stage	Consultation	
IA Number	MoJ 210	
Origin	Domestic	
Expected date of implementation (and SNR number)	TBC	
Date submitted to RPC	22/08/2013	
RPC Opinion date and reference	03/09/2013	RPC13-MOJ-1855(2)
Overall Assessment	GREEN	
RPC comments		
<p>The IA is fit for purpose. The Department has made a number of assumptions which will need to be expanded on following consultation, including monetising the costs and benefits of the proposal on business and civil society organisations.</p>		
Background (extracts from IA)		
<p>What is the problem under consideration? Why is government intervention necessary?</p>		
<p><i>“The number of judicial review applications has more than doubled in the past 10 years. The Government is concerned that a large number of these claims are weak or frivolous and that there is scope for JRs to be brought by those without a direct interest in the matter at hand. The Government is also concerned that financial incentives currently do not discourage claimants from bringing weak cases. Unsuccessful JRs may disproportionately frustrate and delay the implementation of government policy including infrastructure projects that may contribute towards economic growth.”</i></p>		
<p>What are the policy objectives and the intended effects?</p>		
<p><i>“The policy objective is to reduce the incidence of JRs brought by those with only a tangential or representative interest, particularly where those claims are brought as part of a campaigning or delaying approach, by amending the test for standing (who may bring a claim) and by providing better balanced financial incentives to discourage weak or frivolous cases. In this way, this should ensure that the right balance is struck between reducing the burdens on public services, and protecting access to justice and the rule of law.”</i></p>		
<p>What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)</p>		
<p><i>“The options considered in this Impact Assessment are outlined below.</i></p>		
<p><i>Option 1: The Government is seeking views on limiting standing (who may bring a claim) in 2 ways:</i></p>		
<p><i>1a) to those with a direct interest in the matter at hand, unless the claim is an “environmental JRs”</i></p>		

1b) in 'environmental JRs' to NGOs who promote the protection of the environment or to individuals who are able to demonstrate a genuine interest and sufficient knowledge in the environmental matter (save for those with a direct or familial).

Option 2: Rebalance financial incentives for claimants considering whether to bring a JR. This option has four components:

- 2a) Claimants pay defendants' costs when claimants lose oral renewal hearings,*
- 2b) Increased use of cost orders against legal representatives for misconduct,*
- 2c) Rebalanced use of Protective Costs Orders in non environmental cases,*
- 2d) Cost provisions in relation to third parties and non parties.*

The Government wishes to receive views on amending standing. In terms of financial incentives, the Government's favoured option is to implement all proposals to meet the policy objectives."

Identification of costs and benefits, and the impacts on business, civil society organisations, the public sector and individuals, and reflection of these in the choice of options

Assumptions and monetisation of costs and benefits: The Department has made a number of assumptions in its IA and explains that it has not been able to monetise all costs and benefits at this stage. However, the Department explains that it will use the consultation period to consult stakeholders in order to ensure a robust assessment of the likely costs and benefits to business and civil society organisations.

Comments on the robustness of the Small & Micro Business Assessment (SMBA)

The proposals regulate business and are intended to come into force after 1 April 2014. Therefore the SMBA is applicable. At this stage the SMBA is sufficient as the Department will use the consultation period to gain more information on the likely impact the IA's options will have on small and micro businesses.

Following consultation, the Department will need to explain more clearly the extent to which the burdens of the preferred option(s) on small and micro businesses will be mitigated.

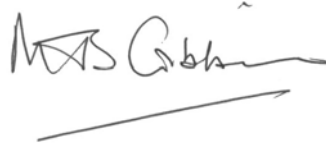
Comments on the robustness of the OITO assessment.

At this stage, the Department has set out in its IA that the proposal is regulatory, in scope of OITO and would have a net benefit to business (an 'IN' with Zero Net Cost). The Department explains that "...the gains to business are likely to exceed the costs to business and to the third sector. As such, the reforms have been classed as an IN with zero net cost." (paragraphs 2.26 and 2.61 of the IA). The basis of the assessment appears to be that some civil society organisations would incur costs by being excluded from bringing judicial review challenges in some cases where they do not have a direct interest. In addition, business and civil society organisations may incur increased costs from paying for defendants' oral renewal costs when defendants are successful. Business in particular would benefit directly from reduced

delays and from less uncertainty of the risk of delays.

Further to the comments on identified costs and benefits above, the evidence supporting the estimated Equivalent Annual Net Cost to Business will have to be strengthened so that it can be validated at final stage. In particular, it will be important to determine which costs and benefits are direct, and which are indirect in accordance with the Better Regulation Framework Manual, July 2013 (paragraphs 1.9.31 – 1.9.33).

Signed

A handwritten signature in black ink, appearing to read "Michael Gibbons", with a long horizontal stroke underneath.

Michael Gibbons, Chairman