

<b>Title:</b> Reform of the Employment Tribunal System <b>IA No:</b> BIS019(C)-16-LM <b>RPC Reference No:</b> N/A <b>Lead departments:</b> Ministry of Justice, Department for Business, Energy and Industrial Strategy. <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>			
	<b>Date:</b> October 2016			
	<b>Stage:</b> Consultation			
	<b>Source of intervention:</b> Domestic			
	<b>Type of measure:</b> Primary legislation			
<b>Contact for enquiries:</b> labourmarket.consultations@beis.gov.uk				
<b>Summary: Intervention and Options</b>				<b>RPC Opinion:</b> N/A – Fast Track

Cost of preferred (or more likely) option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2014 prices)	One-In, Three-Out	Business Impact Target Status
£98.32m	£9.57m	-£1.1m	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 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:** No reform of ETs and the EAT.

**Option 1:** 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 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 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?	<b>Micro</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	<b>Traded:</b> N/A		<b>Non-traded:</b> 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:** 

**Date:**  
25/10/2016

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# Summary: Analysis & Evidence

## Legislative Option 1 (and subsequent reform)

**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 reform)

Price Base Year 2015	PV Base Year 2018	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 90.45	High: 101.05	Best Estimate: 98.32

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	24.8	2.8	47.6

#### 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. The familiarisation costs to employers and individuals are currently considered to be negligible given the constantly changing pool of users participating in ETs. There will be a cost to legal professionals to familiarise themselves with the new ET processes of £0.5m. Total transition costs to Government are estimated to be £24.3m. Total ongoing costs to Government are estimated to be approximately £3m from 2022/23, comprising information and communications technology (ICT) costs, call centre and other assisted digital costs, contact centre costs and caseworker costs.

#### 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 those for ETs, given the volume of appeals heard in the EAT.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0.0	16.4	138.0
High	0.0	17.7	148.6
Best Estimate	0.0	17.4	145.9

#### 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. 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 £0.4m for claimants and £1.7m for employers, once the reforms are fully in place. Government benefits are anticipated through estate savings (£6m per year from 2021/22), judicial savings (£10m), admin (£3m) as well as other channels (£0.1m). Total ongoing monetised benefits to Government are estimated to be around £18m per year from 2021/22.

#### 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 those for ETs, given the volume of appeals heard in the EAT.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
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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 would be delivered via secondary legislation) that are enabled by the powers given in the primary 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. The consultation will be used to gather further evidence to develop and refine key assumptions.

**BUSINESS ASSESSMENT (of subsequent reform following legislative option 1)**

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>Score for Business Impact Target (qualifying provisions only) £m:</b>
<b>Costs: 0.1</b>	<b>Benefits: 1.1</b>	<b>Net: 1.1</b>	-5.5

# 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)<sup>1</sup> 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

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<sup>1</sup> 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, for example, in respect of the increased delegation of work from judges to caseworkers, the proportionate resolution of disputes 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 under the terms of the ETA 1996. Reliance on another department to deliver necessary changes 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 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 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. 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;

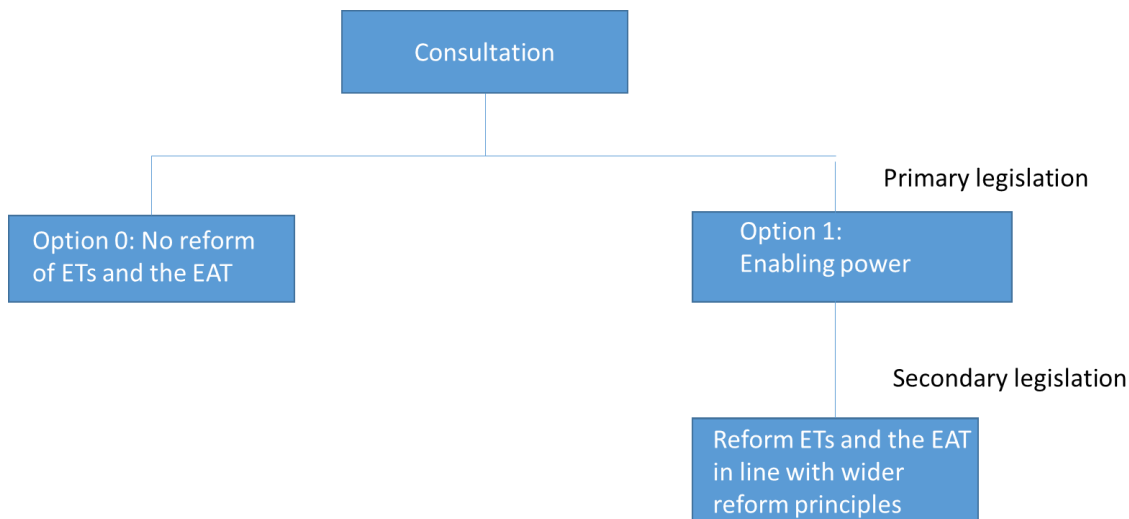


- delegate routine tasks from judges to HMCTS caseworkers, including general case management decisions according to judicial pre-set criteria – allowing judges to focus on those matters where their legal expertise and knowledge is needed, speeding up the resolution of disputes;
  - introduce a single judge as the default panel position for all tribunals, using non-legal members only where required by the needs of the specific case as determined by criteria set by the senior judiciary, streamlining the handling of cases and speeding up the resolution of disputes and providing a more tailored approach for individual cases, so that claimants can be confident that the decisions will be 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 use, 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. 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.
13. The purpose of this consultation is to set out how the Government intends to make sure that the reform programme can be successfully implemented in ETs and the EAT and begin the process of identifying how that should be done in a way which enables the positive benefits that change will bring, whilst maintaining the strengths of the current Employment Tribunals system. 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 (including status-quo)**

14. Option 1 involves potential changes to primary legislation, the ETA 1996. 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. Our current understanding is that the impacts on users of Option 1 would primarily be the result of any new procedural rules introduced by the TPC. These would be given effect by way of statutory instruments and 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**



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

### **Option 0: No reform of ETs and the EAT**

16. This means that there would be no changes to the way that ETs and the EAT currently operate. Whilst significant improvements 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<sup>2</sup>), the general processes and procedures of ETs and the EAT are already significantly out of sync with both other tribunals and the wider civil court system (for example, in relation to the delegation of functions to suitably qualified staff, which is a feature of operations across all 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.

17. This option would result in no changes to the ETA 1996. 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.

18. Not reforming the ETA 1996 would prevent necessary flexibility being introduced to the powers governing the scope of procedural matters and ETs and the EAT would not be able to deliver the improvements in user experience and system efficiency that would exist elsewhere in the justice system. The effect of this would be that ETs and the EAT would be isolated from the rest of the justice system with increasingly inefficient systems and processes, resulting in an unsustainable 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**

19. 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 these reforms in a way that is appropriate to the

<sup>2</sup> 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.



needs of users of ETs and the EAT. 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.

20. 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.
21. 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 Tribunals Procedure Committee (TPC). The membership of the TPC would be amended to reflect the committee's new responsibilities, enhancing the role of stakeholders in making rules for ETs and the EAT.
22. 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.
23. 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 but without bringing ETs and the EAT fully into that 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 TCE Act 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.
24. The existing provisions in the ETA 1996 governing panel composition would be amended and 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. MoJ is in the process of consulting on proposed changes to those requirements<sup>3</sup> which would remove the current explicit requirement for the SPT to have regard to the panel composition that existed prior to a tribunal being transferred into the unified system. This would allow the SPT to determine panel composition purely on factors that are currently relevant to the modern reformed tribunal system and its users, rather than basing decisions on the historic needs of the tribunals. Following such a 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) which would be subject to the agreement of the Lord Chancellor. A similar approach would be taken in respect of panel composition in ETs and the EAT.

25. Section 2(3) of the TCE Act 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.
26. 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)**

27. The Government has identified that the current provisions within the ETA 1996 are not sufficiently broad and flexible to provide the necessary certainty for 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.
28. 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 Reform Bill which is expected to be introduced in early 2017.
29. Note that all analysis presented here will be revised as necessary in light of responses to the consultation and a final impact assessment will be produced containing updated analysis of all proposals that are taken forward.

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

# Monetised and non-monetised costs and benefits – 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.**

30. 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 but this consultation will help inform this.
31. 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.
32. Government transition costs would take place over the period 2018/19 to 2020/21 inclusive. As set out in the 'Options' section, MoJ 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.
33. 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.
34. 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<sup>4</sup>. On the basis of these volumes, one might expect the impacts on EAT to be about 5% of the impacts on ETs. 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.

## **Costs (ETs only)**

### **Users**

#### ***Transition costs***

35. 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

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<sup>4</sup> Ministry of Justice, Tribunals and gender recognition certificate statistics quarterly: January to March 2016, June 2016.

(multiples) can involve a number of claimants<sup>5</sup>. There were around 1.19 million employers in 2015<sup>6</sup>, and around 25.8 million employees<sup>7</sup> 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.

36. 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<sup>8</sup>. The median hourly wage excluding overtime of a legal professional is £23.81 (ASHE 2015), 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 £28.62. 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<sup>9</sup>. 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 £515,000 for the cost of familiarisation for employment lawyers (6,000 x 28.62 x 3).

### ***Ongoing costs***

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

38. 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.

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

### ***Communication costs***

40. As noted above, the reforms would look to enable cases to be resolved through a range of different media, including physical and online hearings, reflecting the needs of the

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<sup>5</sup> 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).

<sup>6</sup> 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.

<sup>7</sup> ONS, Labour Market Statistics, May 2016.

<sup>8</sup> Employment Lawyers Association, About ELA <http://www.elaweb.org.uk/content/about-ela> [Accessed 10th June 2016]

<sup>9</sup> ACAS, 'New employment law and updates': <http://www.acas.org.uk/index.aspx?articleid=3301> [Accessed 6th July 2016]

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.

41. 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<sup>10</sup>. 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.
42. 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<sup>11</sup>. 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<sup>12</sup>.
43. 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, MoJ may look to facilitate the use of public or 'on demand' phone and internet facilities, including live video links. This may result in a small minority of employers and claimants going through tribunal paying 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<sup>13</sup> would be mitigated by the reduced need to incur postage costs.
44. 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 potentially 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.
45. 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 costs of participating in a tribunal hearing<sup>14</sup>), 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.

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<sup>10</sup> 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.

<sup>11</sup> 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 10<sup>th</sup> June 2016]

<sup>12</sup> 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.

<sup>13</sup> Ryman 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],

<sup>14</sup> 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](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284042/bis-14-585-early-conciliation-impact-final.pdf) [accessed 26th July 2016].

46. During the consultation we would welcome any evidence on the current communication costs to employers and individuals of using ETs and the EAT, as well as any comments on how these costs could change in future under the proposed reforms.

#### *Summary of users' costs*

47. 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 £515,000. 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 (but only a small minority of users would be affected through lack of access to technology).

48. There are not currently expected to be ongoing monetary costs to employers or individuals. We would welcome any evidence during the consultation period of ongoing costs that businesses may incur due to the reforms.

## **Government**

49. 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**

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

51. 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.

52. 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 portage costs.

53. 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 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.

54. 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.

55. Total transition costs to Government of option 1 are estimated to be around £24m.

56. This option would involve costs associated with the preparation and passage of primary legislation; however, these are assumed to be business-as-usual resource costs.

## Ongoing

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

58. 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.

59. 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.

60. Around 90% of claims issued in ETs are currently started online<sup>15</sup>, 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 variations of 'Assisted Digital' (AD) 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 is already consulting separately on proposals around AD provision<sup>16</sup>.

61. 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.

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

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<sup>15</sup> 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.

<sup>16</sup> Transforming our justice system: summary of reforms and consultation. <https://consult.justice.gov.uk/digital-communications/transforming-our-courts-and-tribunals>

63. 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.
64. As part of the reforms there would be an introduction of case workers employed by HMCTS. Case workers 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 case workers are initial consideration, case management hearings, dismissals, postponements witness orders and withdrawal requests. To provide costs for case workers 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.
65. Case workers 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 case workers 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.
66. Total ongoing costs of option 1 from ICT costs, assisted digital and call centre costs, and case officer costs in ETs could be around £3m from 2022/23, where 2022/23 is the 'steady state'.

## Benefits (ETs only)

### Users

67. 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

68. 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.
69. 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<sup>17</sup>. The average travel cost figures in SETA do not break the cost

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<sup>17</sup> 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.

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).

70. 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<sup>18</sup>). The mean in this instance is considered more 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)<sup>19</sup>.
71. The median final hearing lasts a single day<sup>20</sup>. 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<sup>21</sup>.
72. In the two full years following the introduction of ET fees, there was an annual average of around 18,300 ET cases received<sup>22</sup>. 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.
73. Currently, we estimate that 55% of case management procedures in ETs result in a face-to-face hearing<sup>23</sup>, and, based on management information, that all preliminary, cost/remedy and final hearings are face-to-face.
74. 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

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<sup>18</sup> 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).

<sup>19</sup> There are currently around 16,000 final hearings compared to around 1,000 remedy/cost hearings.

<sup>20</sup> SETA 2013 Table 6.11.

<sup>21</sup> 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).

<sup>22</sup> Tribunals and gender recognition certificate statistics quarterly: January to March 2016, Table 1.2.

<sup>23</sup> Evidence from the Manchester Employment Tribunal showed that in May 2016 45% of Case Management procedures were carried out over the phone.

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**

<u>Procedure</u>	<u>Online/e-mail</u>	<u>Virtual</u>	<u>Face-to-Face</u>
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%

75. 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<sup>24</sup> 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**

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

### Reduction in travel time

76. 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.

77. 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<sup>25</sup>. 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<sup>26</sup>. This modelling gives an estimated average travel time of 52 minutes for all journeys to the nearest tribunal<sup>27</sup>. We do not have sufficient regional data on the location of employers involved in ETs in order to adjust this

<sup>24</sup> SETA 2013 Table 6.10.

<sup>25</sup> See here: <https://www.gov.uk/government/consultations/proposal-on-the-provision-of-court-and-tribunal-estate-in-england-and-wales>.

<sup>26</sup> 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.

<sup>27</sup> 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.

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.

78. 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<sup>28</sup>.

**Table 3: Wages and labour costs estimates**

	Median gross hourly wages excluding overtime (ASHE 2015)	Median hourly labour costs <sup>29</sup>
Chief executives and senior officials	£42.42	£50.99
Human resource managers and directors	£23.41	£28.14
All employees	£11.75	£14.12

79. We also take account for the proportion of employers that attend hearings in ETs – 84% for final hearings<sup>30</sup> 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: <u>claimants (£000s)</u>	Value of reduced travel time: <u>employers (£000s)</u>
Case management hearings	56	278
Preliminary hearings	27	134
Cost/remedy hearings	10	49
Final hearings	44	218
<b>Total</b>	<b>136</b>	<b>679</b>

80. In summary, we anticipate that reduced travel time will save claimants £136,000 and employers £679,000.

### Efficiency savings at hearings

81. 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.

82. 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

<sup>28</sup> 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.

<sup>29</sup> 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.

<sup>30</sup> SETA 2013 Table 6.10.

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.

83. The range of estimated benefits to claimants and employers in ETs are given in Table 5. Paragraph 123 in the assumptions sections explains the derivation of the low, best and high estimates for these benefits to users.

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

<u>Procedure</u>	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	22	29	0	11	146
Preliminary hearings	0	12	23	0	58	116
Cost/remedy hearings	0	4	8	0	19	38
Final hearings	0	148	186	0	720	979
<b>Total</b>	<b>0</b>	<b>186</b>	<b>246</b>	<b>0</b>	<b>908</b>	<b>1,226</b>

84. In summary, the central estimates anticipate that reduced hearing time will save claimants £186,000 and employers £908,000 in ETs.

### **Additional efficiencies throughout tribunal process (not monetised)**

85. 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.
86. 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.
87. 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**



88. 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 123).

**Table 6: Summary of Benefits to ET Users**

	<u>Claimants</u>			<u>Employers</u>		
	<u>Low estimate</u>	<u>Best estimate</u>	<u>High estimate</u>	<u>Low estimate</u>	<u>Best estimate</u>	<u>High estimate</u>
Hearing efficiencies	£0.00m	£0.19m	£0.25m	£0.00m	£0.91m	£1.23m
Saving in travel time	£0.14m	£0.14m	£0.14m	£0.68m	£0.68m	£0.68m
Saving in travel costs	£0.12m	£0.12m	£0.12m	£0.10m	£0.10m	£0.10m
<b>Total</b>	<b>£0.25m</b>	<b>£0.44m</b>	<b>£0.50m</b>	<b>£0.78m</b>	<b>£1.69m</b>	<b>£2.00m</b>

89. 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**

	<u>2019/20</u>	<u>2020/21</u>	<u>2021/22</u>	<u>2022/23</u>
Claimants (best estimate)	£0.26m	£0.43m	£0.44m	£0.44m
Employers (best estimate)	£1.00m	£1.67m	£1.69m	£1.69m

## Government – Monetised

### Estates

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

91. Under option 1, 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’.

92. 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.

93. 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

94. Judicial benefits in ETs would have three main drivers, the increased use of case workers, changes in panel member composition and the increased digitisation of the hearing and tribunal processes.

95. Case workers 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. Benefits due to the introduction of case workers in ETs have been calculated by identifying tasks which were previously completed by judges and are now to be completed by case workers. The total time of these tasks multiplied by judiciary costs is then compared with those costs of case workers to produce a saving figure.
96. Case workers 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. 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.
97. To calculate judicial savings 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%.
98. 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 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<sup>31</sup>. 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, with the agreement of 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 may not 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 NLMs. 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%.
99. As a result of the above factors, total judicial savings resulting from reform of the ETs are estimated to be around £10m per year from 2021/22.

### **Administrative staff**

100. Initial case assessments and automation are the two main factors contributing to administrative benefits in ETs.
101. 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.
102. 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.

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<sup>31</sup> See section 4 of the ETA 1996.

103. 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.
104. 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.
105. Admin benefits resulting from reform are estimated to be around £3m from 2021/22.

### Other

106. 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.
107. Total ongoing monetised benefits in ETs to Government of option 1 are estimated to be around £18m per year from 2021/22.

### Government – Non-monetised

108. 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<sup>32</sup>, we expect minimal impact.

## Summary of Option 1

109. Transition costs to Government are estimated to be around £24m. Ongoing costs to Government in ETs are estimated to be approximately £3m p.a. from 2022/23, whilst the monetised benefits are estimated to be around £18m p.a. from 2021/22.
110. Transition costs for businesses are estimated to be £515,000 in ETs. There are not estimated to be any ongoing costs to users. The central estimates of the steady state ongoing benefits to users are estimated to be £0.44 million for claimants and £1.69 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

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<sup>32</sup> 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.

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**

	<u>2019/20</u>	<u>2020/21</u>	<u>2021/22</u>	<u>2022/23</u>
Claimants (best estimate)	£0.26m	£0.43m	£0.44m	£0.44m
Employers (best estimate)	£1.00m	£1.67m	£1.69m	£1.69m

111. 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 those for ETs.

## Analytical notes

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

112. As noted in the 'Options' section, the reforms 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.

113. 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 and used alongside the feedback to this consultation to test and clarify the detailed impacts of this approach on the ET jurisdiction. It is currently anticipated that the any reform of ETs would have minimal 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.

114. This impact assessment is at the consultation stage of the policy, and it is expected that the consultation will provide additional evidence to help inform policy development going forward.

## Assumptions and risks

### Key assumptions

115. 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. The consultation will further inform assumptions.

116. 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.
117. 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.
118. Case officer salary is provisionally taken to be Band B; contact centre staff are Band E.
119. Tasks in which some of the volume has been assumed to transfer to case workers 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.
120. 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.
121. 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.
122. For illustrative purposes, we have assumed there will be a 75% reduction in the number of panel member sitting days in ETs. In reality, this figure may be higher or lower.
123. 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.
124. 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 impact on case numbers).
125. Under Option 1 we have assumed that the current fee structure would remain (subject to the outcome of the review of the introduction of fees in the ET).

## Risks

126. 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 physically sit as members of a two or 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 make sure that they would be used only where their expertise is relevant to the outcome of the case and 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.
127. 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<sup>33</sup>.
128. 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 (as stated in paragraph 37).
129. 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 practice statement of ETs was amended to allow unfair dismissal cases to be 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.
130. 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 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

131. 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

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<sup>33</sup> 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.



presented in this document arise from the anticipated subsequent changes using secondary legislation 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<sup>34</sup>. The Manual states that "...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".

132. We assume that the transition costs to employment lawyers of £515,000 in ETs are all costs to business. We will use the consultation to gather evidence of any other potential costs to business.

133. To estimate the direct benefits to business, we take the estimated costs and benefits to employers (Table 10) and factor them downwards to take account of the proportion of cases that are against public sector employers (estimated to be 17%)<sup>35</sup>. This produces the following estimated costs to business (which remain steady from 2022/23).

**Table 9: Benefit to business from reform package in ETs set out in Option 1, £ millions**

	<u>2019/20</u>	<u>2020/21</u>	<u>2021/22</u>	<u>2022/23</u>
<b>Benefit to business</b>	0.83	1.38	1.40	1.40

134. The estimated equivalent annual net direct cost to business (EANDCB) is -£1.00m at 2014 prices. Again note that these figures are for ETs only. Equivalent figures for EAT would be much less.

### **Business Impact Target and One in Three out (OI3O) status.**

135. This measure contains a mix of different provisions, some relating to public sector impacts and others relating to private sector impacts. This is, therefore, a hybrid measure and only the direct costs and benefits of the provisions relating to businesses would be scored for inclusion in the BIT. As noted above, we expect that there will be no direct impact from the primary legislative change. However, we estimate that there will be costs and benefits to business resulting from the secondary legislation that will follow from the powers introduced in the change to primary legislation. These direct costs and benefits to business are scored as an OUT under OI3O, as the expected monetised benefits outweigh the costs. Also, the estimated gross costs to business from the reforms fall below £1million per annum. The measure has therefore been assessed as suitable for the fast track appraisal route as the public sector costs are out of scope of the regulatory agenda. The impacts relating to the public sector provisions that do not score under the BIT will be included in the impact assessment that is sent to the RPC for validation of the equivalent annual net direct costs to business.

136. The estimated BIT score is -£5.5 million.

<sup>34</sup> Paragraph 1.1.15, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/468831/bis-13-1038-Better-regulation-framework-manual.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/468831/bis-13-1038-Better-regulation-framework-manual.pdf).

<sup>35</sup> SETA 2013 Table 8.6.

# Small and Micro Business Assessment

## Demographics of businesses involved in employment tribunals

137. Small and micro businesses are in scope of the proposed reforms. SETA 2013<sup>36</sup> 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.
138. 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 1.
139. 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 1, this would equate to an annual benefit of £0.59m (of total benefits to business of £1.69m, excluding the EAT).
140. 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.
141. Some elements of the reforms proposed under Option 1, 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.
142. 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 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.

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<sup>36</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/316704/bis-14-708-survey-of-employment-tribunal-applications-2013.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/316704/bis-14-708-survey-of-employment-tribunal-applications-2013.pdf).

## Mitigating impacts on small and micro businesses

143. Given the anticipated benefits of option 1 there is no reason to consider excluding businesses of certain sizes.
144. We will continue to investigate during consultation how the impacts of the proposed reforms may vary depending on firm size. There is a specific consultation question on the potential impact on small and micro sized businesses. We welcome any evidence on this that will inform an updated small and micro business assessment to accompany final policy proposals.

## Family Test

1. The Government has considered the full checklist of questions which are included in the official 'Family Test: Guidance for Departments' document<sup>37</sup>. 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.
4. We welcome any evidence to inform this assessment of impact on families during the consultation period.

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<sup>37</sup> Available here: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/368894/family-test-guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/368894/family-test-guidance.pdf).