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## **Prisons and Courts Bill: reform of the employment tribunal system**

**Department for Business, Energy and Industrial Strategy**

**RPC rating: validated**

### **Description of proposal**

The Government are investing £1 billion in a programme of reforms to transform the employment tribunal system, intended to reduce the complexity and cost of the system, whilst allowing users to seek justice more quickly. The reforms include digitising the claims process through the use of online hearings and communication, delegating routine tasks from judges to caseworkers, and providing the judiciary with greater flexibility in setting the composition of employment tribunal panels.

The impact assessment (IA) addresses proposals to bring employment tribunals (ETs) and the Employment Appeal Tribunal (EAT) into line with these forthcoming changes to the wider employment tribunal system. In particular, to ensure that legislation governing these tribunals is sufficiently flexible to facilitate the use of caseworkers and the proposed changes to ET panel composition.

### **Impacts of proposal**

To assess the impacts of the proposal as a whole, the IA considers anticipated subsequent changes involving secondary legislation. It focuses on the costs and benefits relating to ETs, on the basis that they account for approximately 95 per cent of cases received by ETs and the EAT; in 2015/16, ETs handled 18,000 cases, whereas the EAT received 1,000 appeals.

#### Impacts on ET users

The IA explains that reform of the ETA would create transition costs for employment lawyers, each of whom would spend an estimated three hours familiarising themselves with the proposed changes to employment tribunal procedures. Based on the assumption that these would affect 6,000 lawyers (the membership of the Employment Lawyers Association), total direct costs to employment lawyers are estimated to be £0.5 million.

Individuals and employers attending ETs are expected to benefit from a reduction in the time taken to complete a case; this is due to caseworkers specialising in certain functions to advance the process more quickly, rather than a reduction in the work needed from ET users in making, or responding to, a claim. Caseworkers would be employed by HM Courts & Tribunal Service, carrying out various tasks with oversight by the judiciary, including initial consideration, dismissals, and general case management duties. The Department explains that it has not been able to monetise this benefit, as it relates to a reduction in time of users involved in individual cases, which is difficult to capture, even in broad terms.

### Impacts on government

The IA explains that government would, as a result of the proposal, incur ongoing costs arising from the introduction of caseworkers. To estimate this cost, the volume of tasks allocated to these employees is multiplied by the expected time taken to complete them and, then, applied to HMCTS salary band B. This generates an estimated cost to government of £0.6 million per year from 2022/23 onwards (the point at which a 'steady state' is reached).

The IA also estimates benefits to the judiciary, such as increased availability for other hearings, as a result of caseworkers taking over certain duties. This is calculated by identifying tasks currently carried out by judges, and applying judiciary hourly costs to this volume. The benefits to government are also expected to arise through changes to panel composition, as non-legal members (NLMs) would no longer be needed, in all cases, to support a judge. These savings from a reduction in panel membership have been estimated using the current number of days worked by NLMs, the daily fee of these members, and an assumed 75 per cent reduction in sitting days. Combining these savings with the benefits from the introduction of caseworkers, judicial benefits are estimated to be £4 million per year from 2021/22 onwards (the point at which their 'steady state' is reached).

### **Quality of submission**

The Department has provided a sufficient level of analysis to enable the validation of an equivalent annual net direct cost to business (EANDCB) of £0.1 million. The department's assessment includes impacts arising from subsequent, related secondary legislation, including the delegation of routine judicial tasks to caseworkers and revisions to panel composition. It also provides a sufficient small and micro business assessment, outlining the proportion of employers using ETs that are small and micro businesses.

The IA could, however, be improved in the following areas:

The IA assesses the impacts of the proposals against a counterfactual involving digitisation of the employment tribunal system, carried out as part of wider reforms. As this is presented as a separate policy option in the IA, it is not immediately clear whether the impacts of the ET proposals should also include those of this ‘do minimum’ counterfactual. The IA should consistently clarify this issue – for instance, while paragraph 110 states that “*Option 1 would have the impacts summarised above for Option 0...*”, paragraph 18 states that “*...the impact of legislative change (Option 1) has been assessed against the counterfactual of this ‘do minimum’ option*”. The IA appears to include, correctly, only the proposal’s additional impacts in the net present value and the EANDCB figures. The IA would benefit both from clarifying that option 0 is, in fact, a ‘do nothing’ counterfactual, and from a more concise analysis of its impacts, in order to reduce the length of the IA.

The IA identifies that a benefit to ET users would be a potential reduction in the length of time it takes to complete a case. The Department states that this would be due to caseworkers being allocated more routine tasks, but that the potential saving cannot be monetised. The IA would benefit from further explanation of these benefits to users, or of why providing such an explanation is not possible. Regarding ongoing costs to users, the IA states that there may be a greater number of challenges to decisions, arising from the caseworker management of cases. While this cost is expected to be negligible, on the basis that caseworker decisions would have to be approved by the judiciary, the IA would benefit from further consideration of whether this increase in challenges would arise.

Furthermore, the IA’s section on direct impacts (page 33) states that benefits to business do not feature in the summary figures on the basis that they “*...derive from efficiency gains related to the better use of technology*” (paragraph 151). The IA could be improved by clarifying the reasoning behind this claim, and that these benefits relate to the ‘do minimum’ policy option.

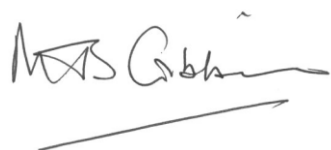
With regard to familiarisation costs, the IA uses the median hourly wage of a legal professional (based on data from the Annual Survey of Hours and Earnings) to estimate the impact on employment lawyers. The IA would benefit from considering whether this is representative of the cost of lawyers’ time, for instance in cases where businesses have to seek external legal advice. In addition, as discrimination lawyers are also likely to be affected by the reforms, an assessment of the familiarisation costs incurred by these lawyers would also improve the IA.

### Departmental assessment

Classification	Qualifying regulatory provision
Equivalent annual net direct cost to business (EANDCB)	£0.1 million
Business net present value	-£0.53 million
Societal net present value	£26.13 million

### RPC assessment<sup>1</sup>

Classification	Qualifying regulatory provision (IN)
EANDCB – RPC validated	£0.1 million
Business impact target score	£0.5 million
Small and micro business assessment	Sufficient



**Michael Gibbons CBE**, Chairman

<sup>1</sup> For reporting purposes, the RPC validates EANDCB and BIT figures to the nearest £100,000