

Title: Judicial Review & Courts Bill: Employment Tribunals, Online Procedure Rules Committee and Coroners Court measures. IA No: MoJ07/2021 RPC Reference No: N/A Lead department or agency: Ministry of Justice Other departments or agencies: BEIS, HM Courts and Tribunals Service, MHCLG	Impact Assessment (IA)		
	Date: 21 July 2021		
	Stage: Final		
	Source of intervention: Domestic		
	Type of measure: Primary legislation		
Contact for enquiries: Georgina.treacy@justice.gov.uk			

Summary: Intervention and Options	RPC Opinion: Not Applicable
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Cost of Preferred (or more likely) Option (in 2020-21 prices)

Total Net Present Social Value £70k	Business Net Present Value N/A	Net cost to business per year N/A	Business Impact Target Status Not a Regulatory Provision
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What is the problem under consideration? Why is government action or intervention necessary?

The Secretary of State at the Department for Business, Energy & Industrial Strategy (BEIS) has responsibility for the procedure rules of Employment Tribunals (ETs) and the overarching policy framework for ETs and the Employment Appeal Tribunal (EAT). This means the ET is the only part of the courts and tribunal system where procedure rules are not the responsibility of independent judicial-led committees. The Judicial Review and Courts Bill will transfer this responsibility to the Tribunal Procedure Committee (TPC). The Bill will also create an Online Procedure Rule Committee (OPRC) to support online procedures in civil, family and tribunal proceedings and facilitate the greater use of technology to enable disputes to be resolved more effectively. The Bill will also streamline inquest procedures to support Covid-19 recovery and reduce unnecessary delays. Government intervention is required in all these cases as they require parliamentary authority.

What are the policy objectives of the action or intervention and the intended effects?

Transferring the ET procedures to the TPC will allow for a quicker response to the need to introduce, amend or revise procedure rules to help address the backlog in outstanding ET claims and other changing circumstances. Additional measures will support this objective by further aligning the processes of the ET and EAT with those of the First-tier and Upper Tribunals. The aim of the OPRC is to provide simpler rules for online procedures in civil, family and tribunals jurisdictions where the requirement for such a procedure has been established and authorised by regulation. In addition, the government considers that a new OPRC will help enable a culture change in the way rules are developed, that will better fit with the evolving nature of technology. Finally, the coroner's courts measures will streamline inquest procedures to help support their recovery from the covid-19 pandemic and support the longer-term policy aim of ensuring that bereaved families do not face unnecessary delays in scheduling of their loved ones' inquests and reduce the distress caused by unnecessary Coroner procedures.

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

- Option 0: Do Nothing – BEIS retains procedure regulation making powers for ETs and the Lord Chancellor will retain the power to make rules for the EAT, online procedures continue to be delivered through existing jurisdictional rules committees and no changes will be made to Coroners' procedures.
- Option 1: Transfer procedure regulation and rule making powers to the TPC, and more closely align the ET and EAT with the First-tier Tribunal and Upper Tribunal
- Option 2: Establish an OPRC for the civil, family and tribunals jurisdictions.
- Option 3: implement five measures as amendments to the Coroners and Justice Act 2009 to allow:
 - Discontinuance of an investigation where cause of death becomes clear;
 - Power to conduct non-contentious inquests in writing;
 - Use of audio or video links at inquests;
 - Inquests to be held without a jury if a death is suspected to have been caused by COVID-19 (a notifiable disease);

Will the policy be reviewed? The legislation will be reviewed in line with post-legislative scrutiny procedures.

Is this measure likely to impact on international trade and investment?	No			
Are any of these organisations in scope?	Micro Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: N/A		Non-traded: N/A	

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

Signed by the responsible Minister: Robert Buckland Date: 20.07.21

Summary: Analysis & Evidence

Policy Option 1

Description: Transfer rule making powers to the TPC, and more closely align the ET and EAT with the First-tier Tribunal and Upper Tribunal

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)			
			Low:	High:	Best Estimate: £m	
COSTS (£m)						
	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)	
Low	N/a		£		N/A	
High	N/a		£		N/A	
Best Estimate	£0m		£		N/A	
Description and scale of key monetised costs by 'main affected groups'						
The TPC is likely to incur administration costs as a result of the change as well as for recruiting the additional TPC members. These are estimated at £3.5k per year.						
Other key non-monetised costs by 'main affected groups'						
There are no non-monetised costs for the main affected groups.						
BENEFITS (£m)						
	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)	
Low	N/a		N/a		N/A	
High	N/a		N/a		N/A	
Best Estimate	£0m		£0m		N/A	
Description and scale of key monetised benefits by 'main affected groups'						
There are no expected monetised benefits.						
Other key non-monetised benefits by 'main affected groups'						
The key benefit is anticipated to be a quicker response to the need to introduce, amend or revise ET procedures. Over time, this option will lead to changes in the rules and procedures for the ET and EAT and but the nature of the changes and their impacts will depend on future decisions of the TPC, which cannot be known at this time.						
Key assumptions/sensitivities/risks					Discount rate (%)	N/A
The impacts of this option are not based on any major assumptions and there are no associated risks.						

BUSINESS ASSESSMENT (Option 1)

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

Summary: Analysis & Evidence

Policy Option 2

Description: Establish an OPRC for the civil, family and tribunals jurisdictions.

FULL ECONOMIC ASSESSMENT

Price Base Year 14/15	PV Base Year 18/19	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: £70k

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/a	N/a	Optional
High	N/a	N/a	Optional
Best Estimate	£0m	£10k	£70k

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

It will cost Ministry of Justice (MoJ) approximately £10k per annum to run the new OPRC. The running costs are for travel and subsistence, as well as publications. The £10K figure is based on an extrapolation of the running costs of existing rule committees. Over a 10-year appraisal period, this gives an NPV of £70k.

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

Other costs associated with this option, including the digitisation of services that may be brought under the remit of the OPRC, are already funded through the HMCTS Court Reform Programme, so this option does not create any additional costs. Similarly, the duty on the Lord Chancellor to provide additional digital support is already funded through the Court Reform Programme.

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

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

There are no monetised benefits for the main affected groups.

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

Introducing the OPRC will enable the digitisation procedure across the civil, family and tribunals jurisdictions governed by a new set of rules. As any such benefits would relate to the new rules and processes themselves, they are not the direct impacts of this option and are not captured in this IA.

There could be a greater number of court users using the online rules, depending on which non-money claims and Family and Tribunals cases become in scope. Due to uncertainty, these benefits have not been monetised.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
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The analysis assumes current caseloads are maintained. To the extent that the OPRC allows for court users to resolve disputes without the support of legal services providers, we assumed that solicitors and other approved professionals will be able to substitute the time they currently spend on dealing with these cases with other work of a similar value resulting in no net loss of income.

BUSINESS ASSESSMENT (Option 2)

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

Summary: Analysis & Evidence

Policy Option 3

Description: Implement five measures as amendments to the Coroners and Justice Act 2009 to allow:

- Discontinuance of an investigation where the cause of death becomes clear;
- Power to conduct non-contentious inquests in writing;
- Use of audio or video links at inquests;
- Inquests to be held without a jury if a death is suspected to have been caused by COVID-19 (a notifiable disease);
- The merger of coroner areas within a local authority where the new area will not be the entire local authority area.

FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year 2020	Time Period Years	Net Benefit (Present Value (PV)) £0		
			Low: Optional	High: Optional	Best Estimate:
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)
Low	N/a		N/a		N/a
High	N/a		N/a		N/a
Best Estimate	0		0		0
Description and scale of key monetised costs by ‘main affected groups’					
It has not been possible to monetise the costs associated with this option.					
Description and scale of key monetised costs by ‘main affected groups’					
We anticipate there will be small start-up costs for installing audio visual equipment for virtual hearings (around £10k per court). However, as the vast majority of the 85 Coroners’ Courts have already installed such equipment during the current pandemic, and some may choose not to, these additional costs have not been quantified. The running costs will be borne by LAs. They have not been monetised as they are not expected to be large.					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low	N/a		N/a		N/a
High	N/a		N/a		N/a
Best Estimate	0		0		0
Description and scale of key monetised benefits by ‘main affected groups’					
There are no monetised benefits for the main affected groups.					
Other key non-monetised benefits by ‘main affected groups’					
This option will ensure that coroners’ courts operate in line with other courts, bringing efficiencies to the courts and reducing unnecessary inquest procedures. There may be economies of scale from merging Coroner areas. Coroners and their staff will be able to manage their caseload better by hearing inquests remotely or without a hearing at all in non-contentious cases. These measures will support coroners’ courts with post-Covid recovery. By reducing unnecessary inquest procedures, bereaved families and those who support them will benefit from being able to hold the funerals much quickly and from not having the additional stress of unnecessary processes. Bereaved families would benefit from not having to travel to attend inquests, reducing the stress of travel costs and the overall stress of the journey. They would also benefit from more timely inquests.					
Key assumptions/sensitivities/risks					Discount rate
No significant risks have been identified around this option.					

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:	
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Costs: N/A	Benefits: N/A	Net: N/A	Score for Business Impact Target (qualifying)

Evidence Base

A. Background

Employment Tribunals measures

1. Employment Tribunals (ETs) were established by the Employment Tribunals Act 1996 (ETA) under the responsibility for the Department for Trade and Industry (now Business, Energy and Industrial Strategy (BEIS)).
2. Following the transfer of the ETs and the Employment Appeal Tribunal (EAT) to the then Tribunal Service in 2006, BEIS retained responsibility for the procedure in and governance of ETs as well as the overarching policy framework for ETs and the EAT. Therefore, responsibility for making changes to the regulations which determine procedural matters within ETs continued 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.
3. ETs are, however, the only area of tribunal business where control over procedure rests with a Government minister. This contrasts with all other matters heard in the justice system where procedural rules are the responsibility of independent judicial-led committees.
4. In 2016 the Government consulted on reforming the ET structure and announced the intention to transfer responsibility for ET procedure regulations and EAT rules from the Secretary of State for BEIS and the Lord Chancellor respectively to the Tribunal Procedure Committee (TPC). The TPC is an advisory non-departmental public body that makes rules governing the practice and procedure in the First-tier Tribunal (FtT) and the Upper Tribunal (UT).

Online Procedure Rule Committee

5. On 15 September 2016, the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals published a joint statement of intent on 'transforming the justice system'. As part of this statement, and following the publication of the CCSR, Ministers agreed to establish a new and simpler pathway to justice supported by a new online procedure. Such a procedure will feed into the wider court reform programme, by streamlining the rule making process and facilitating the shift to more digital ways of working.
6. An earlier Bill (the Prison and Courts Bill), which included similar provisions, was introduced into the House of Commons on 23 February 2017, but did not complete Committee stage before the dissolution of Parliament prior to the general election. Likewise, The Courts and Tribunals (Online Procedure) Bill, 2019, which sought to create an Online Procedure Rule Committee and had gone through the House of Lords, fell before the end of Committee Stage for the House of Commons at the dissolution prior to the 2019 General Election. The Judicial Review and Courts Bill contains similar provisions to these previous Bills.
7. The Online Procedure Rules Committee (OPRC) will be responsible for drafting rules to underpin the new online procedure, with the aim of making it easier for parties to resolve disputes earlier using effective triage services and online dispute resolution, or via a mediated settlement, so reserving judicial time for only the most complex cases.

8. The OPRC would have the ability to make Online Procedure Rules not only for civil proceedings, but also for family proceedings and proceedings in tribunals. The OPRC would not, however, be able to make rules for criminal proceedings.

Coroner's courts measures

9. Coroners are independent judicial office holders who have a duty to investigate deaths reported to them that may be violent or unnatural, that have an unknown cause, or that occurred in prison or in other state detention. Coroner services are local services, funded and run by individual local authorities (LAs). There are currently 85 coroner areas in England and Wales. The Chief Coroner provides leadership, support and guidance to coroners.
10. The purpose of a coronial investigation is to determine four questions: who the deceased was and how, when and where they died. Coroners are prohibited from determining civil or criminal liability. An inquest is a public court hearing held by a coroner to determine the above four questions. The vast majority of inquests are held without a jury but a jury must by law be called where the death occurred in custody or other state detention, if it resulted from an accident at work or if the coroner considers that there is sufficient reason for doing so.
11. In many of the approximately 30,000 inquests each year, those most likely to attend – the bereaved family - are content not to do so. A coroner can currently only discontinue an investigation where the cause of death is revealed by a post-mortem examination. If the cause of death is revealed otherwise, the investigation has to proceed to an inquest. A number of coroner areas have seen a backlog of their jury inquest cases, and in particular, jury and non-jury complex inquests due to social distancing requirements.
12. The Coroners and Justice Act 2009¹ (CJA) provides the legislation which regulates coroner services and inquests. The four measures we are proposing would be amendments to current legislation as laid out in the CJA. The aim of the proposed amendments is to bring coroner's courts in line with mainstream courts and tribunals and to streamline inquest procedures; saving time and money for local authority run coroner services. The measures would also support coroner's courts as they plan for post Covid-recovery. Additionally, they will make it easier to merge coroner areas if the merger of two coroner areas would not constitute the entire local authority area, which will cure a current anomaly in the CJA.
13. Finally, the classification of COVID-19 as a notifiable disease in March 2020 meant that under section 7(2)(c) of the Coroners and Justice Act 2009, any inquest into a death where the coroner had reason to suspect that the death was caused by COVID-19 would have had to take place with a jury. This could have had very significant resource implications for LA run coroner services. Whilst jury inquests could have been adjourned until the pandemic had passed, it would have deprived bereaved families of swift closure and would, in any event, simply build up resource pressure for the future.
14. Section 30 of the Coronavirus Act therefore modified the 2009 Act to disapply the requirement that coroners must conduct any inquest with a jury where they have reason to suspect the death was caused by COVID-19.
15. It is now necessary that this requirement is maintained on a temporary basis because when section 30 of the Coronavirus Act is sunsetted, coroners will be required again to hold jury inquests where they have reason to suspect a death has been caused by COVID-19. If there were future outbreaks of COVID-19 after March 2022, or coroners were already investigating

¹ Coroners and Justice Act 2009 (legislation.gov.uk)

deaths then where COVID-19 was suspected to be the cause, they would be required to hold an inquest with a jury.

16. During the pandemic coroners have been significantly impacted by the lockdown restrictions in the conduct of their inquests all of which must be held in public, and a number of which must by law be held with a jury (such as non-natural deaths in custody). Coroners across England and Wales have universally reported particular difficulties in hearing jury inquests due to social distancing requirements limiting the number of those who may attend, and there are considerable backlogs in scheduling these inquests. If coroners were required to hold jury inquests in cases where COVID-19 were suspected as the cause of death, this would add to the existing backlog of jury inquests.
17. Consequently, the intention is to create a temporary mechanism to replicate section 30 within the 2009 Act for a two year period, with a power for the Lord Chancellor to extend this provision if it appears to be necessary, taking into account the effect on the coronial services. This provision will amend Section 7(2) of the 2009 Act so that it removes the requirement to hold an inquest with a jury in relation to a death from COVID-19 (“Exemption from COVID-19 being a notifiable disease”).
18. Coroners would still be able to conduct an inquest with a jury if a death was suspected to have been caused by COVID-19 under existing powers, should they wish to do so, where they think there is good reason to do so. They would still be required to hold an inquest with a jury where another notifiable disease is suspected to be the cause.

B. Policy Rationale and Objectives

Rationale

19. The conventional economic approaches to Government intervention are based on efficiency or equity arguments. Governments may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or there are strong enough failures in existing Government interventions (e.g. waste generated by misdirected rules) where the proposed new interventions avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and distributional reasons (e.g. to reallocate goods and services to more vulnerable groups in society).
20. The primary rationale for intervention for all three options in the Impact Assessment (IA) is efficiency: maintaining outdated and inefficient rules and processes in the courts and tribunals are costly for government and court users, including businesses and bereaved families. Allowing for such rules and procedures to be removed or updated on a more consistent and timely basis, including in response to the Covid-19 pandemic, will make the courts and tribunals more efficient for all users, so saving money to sponsoring departments and the taxpayer and, for bereaved families, reducing unnecessary delay and distress. Allowing the merger of coroner areas within an LA will also help to save resources as the areas which come together will lead to economies of scale and reduced use of resources.

Policy Objectives

Employment Tribunals measures

21. The policy intent is to provide that the procedures and practices in the ETs are better aligned with those that apply to the tribunals unified tribunal system. In particular, the objective is to

create consistency of approach between i) the ET and EAT and ii) the FtT and the UT concerning: rule making; the arrangements for delegating judicial functions to suitably qualified staff; the determination of panel composition in the ETs; and the remuneration of ET judges.

22. These arrangements will also allow for a quicker response to the need to introduce, amend or revise ET procedure rules to help address the backlog in outstanding ET claims as well as dealing with other changing circumstances.
23. We believe that the TPC is better placed to make and amend rules for the ETs given that it is an independent rule committee.
24. Although the policy intention is to make the arrangements between the ETs and other tribunals more consistent, the existing distinct and separate structure of the ETs and EAT will be retained. The intention is therefore that they remain outside the unified tribunal structure.

Online Procedure Rule Committee

25. Working with the senior judiciary, the government has concluded that continuing gradual reform of the justice system based on individual jurisdictions will not be sufficient to deliver the level of change needed and at the pace required, either in terms of delivering the system-wide improvements needed by court users or the reduced costs needed to ensure that the system delivers justice in a proportionate and sustainable way. Instead it is seeking to take forward a radical and ambitious programme of reform that will apply common online design features and principles across the Civil, Family and Tribunal Jurisdictions.
26. Therefore, the associated policy objective is to allow the development of online procedural rules through the OPRC which will fundamentally change the user experience and reduce costs by providing online rules which will be more accessible, intelligible and simple to navigate. This will help to create a court and tribunal system that will proactively help people to navigate their online claims based on the core principles of early facilitation, containment and early resolution which has the minimum number of steps possible that people need to go through to obtain justice while improving access to justice.
27. The online procedure will allow us to launch straightforward digital services that allows everyone to access and understand the system. As online rules develop across the Civil, Family and Tribunal Jurisdiction, we expect that many more cases will be resolved entirely online, with clear information about what is happening and what to do next, as well as openness and scrutiny by the public regarding the nature of rules being applied.

Coroner's courts measures

28. The aim of the CJA along with the Rules and Regulations to underpin it which were implemented in 2013 was to put families at the heart of the coronial process and this has long been a priority for the department and Ministers. Implementing these measures will support the objective of ensuring the coronial process is sensitive to the needs of bereaved people, in particular by reducing the distress caused by unnecessary procedures. These measures will also support coroner's courts with post-Covid recovery.
29. In addition, successive Annual Reports to the Lord Chancellor, Chief Coroners have suggested amendments to the CJA Act which would bring significant advantages to the coroners' courts and ultimately save money for the LAs which fund them.

C. Affected Stakeholder Groups, Organisations and Sectors

30. The following groups will be most affected by the options analysed in this IA.

- HM Courts and Tribunals Service (HMCTS), who have operational responsibility for the civil and family courts and the tribunals;
- Court and Tribunal users, including litigants in person, individuals and employers involved in employment-related disputes and bereaved families.
- The Judiciary;
- Legal service providers, including solicitors and barristers who represent the parties in employment related disputes and interested persons and witnesses at inquests;
- Taxpayers, who subsidise HMCTS as its overall income falls below its overall costs;
- The Chief Coroner, Coroners and their investigating officers and administrative staff;
- Local Authorities, who fund the coroner services and would ultimately benefit from any cost-savings and Ministry of Housing, Communities and Local Government (MHCLG) – the government department with responsibility for funding LAs.
- Organisations which support bereaved families through the inquest process (e.g. the Coroners Courts' Support Service, INQUEST).
- Department for Health and Social Care (DHSC)

D. Description of options considered

31. To meet these policy objectives, the following options are considered in this IA:

- Option 0: Do Nothing – BEIS retains procedure regulation making powers for ETs and the Lord Chancellor will retain the rule making powers for the EAT, new online procedures continue to be delivered through existing jurisdictional rules committees and no changes are made to Coroner's procedures.
- Option 1 – Transfer procedure regulation and rule-making powers to the TPC, and more closely align the ET and EAT with the First-tier Tribunal and Upper Tribunal.
- Option 2 - Establish an OPRC for the civil, family and tribunals jurisdictions.
- Option 3: implement five measures as amendments to the Coroners and Justice Act 2009 to allow:
 - ;
 - Discontinuance of an investigation where the death becomes clear ;
 - Power to conduct non-contentious inquests in writing;
 - Use of audio or video links at inquests
 - Inquests to be held without a jury (on a temporary basis) if a death is suspected to have been caused by COVID-19 (a notifiable disease);
 - The merger of coroner areas within a local authority where the new area will not be the entire local authority area.

32. Options 1-3 are the Government's preferred options as they best meet the policy objectives.

Option 0

33. Under the Do Nothing option:

- Procedure regulation and rule making powers for the ET and the EAT would remain with BEIS. Closer alignment between the ET and the EAT would not occur.

- The delivery of online procedure would continue through existing rules.
- Coroner services would continue with the Coronavirus Act 2020 easements which were put in place to mitigate the expected impact of COVID-19 on coroner services. The ongoing effect of the pandemic means that coroner services would continue to see increasing levels of backlog due to ongoing social distancing restrictions exacerbated by increasing levels of infection in some areas and coroner investigations already in the system. By doing nothing, backlogs of inquests would take much longer to clear as more cases come on stream. There would also be likely to be increased costs as coroners considered alternative solutions such as paying commercial rates to hire venues to hold inquests. This measure is to be time limited to 2 years with a power being given to the Lord Chancellor to extend if it would be expedient to the operation of the coronial system to keep this provision for longer.

Option 1: Transfer ET procedure regulation and EAT rule making powers to the TPC, and more closely align the ET and EAT with the First-tier Tribunal and Upper Tribunal.

34. Under this option, the procedure regulation and rule making powers for the ET and EAT would transfer to the TPC.

35. In addition, the following measure will also be implemented:

- Widening the existing power to make rules in the ET and the EAT so that it is equivalent to the TPC's rule making power under the Tribunals Courts and Enforcement Act 2007;
- Providing for two additional members to be appointed to the TPC: an employment judge to be appointed by the Senior President of Tribunals (SPT) and an employment practitioner to be appointed by the Lord Chancellor;
- Allowing for the delegation of judicial functions in the ET and the EAT to legal case officers;
- Making the Lord Chancellor responsible for determining the composition of the employment tribunals and EAT on the same basis that he does for the FtT and UT; and
- Transferring responsibility for the remuneration of ET judges from the SoS BEIS to the Lord Chancellor

Option 2: Establish an OPRC for the Civil family and tribunals jurisdictions.

36. This option will establish a new OPRC with the power to make Online Procedure Rules for civil and family proceedings and proceedings in tribunals (including ETs). The role of the Committee will be to provide new, simple rules for online procedure which are intelligible to, and easily navigable by, all people who rely on the courts system.

37. The Online Procedure Rules Committee (OPRC) will be responsible for drafting rules to underpin the new online procedure, with the aim of making it easier for parties to resolve disputes earlier using effective triage services and online dispute resolution, or via a mediated settlement, so reserving judicial time for only the most complex cases.

38. This option will not, of itself, create new areas of online working. Regulations (subject to the affirmative resolution procedure) must stipulate the proceedings in respect of which the OPRC may make rules. We expect the OPRC to start by focusing on the areas of digital working that already form part of our modernisation programme to ensure that procedure rules in these areas are simple, intuitive and accessible for the public. The OPRC will do this by making rules easier to understand and navigate by focussing on three core areas:

- Devising new rules that will focus on users being able to solve grievances and resolve their issues online at the earliest opportunity, that is, to categorise their difficulties, and understand both their entitlements and the options available to them. It is also expected that being better informed will help court users to resolve difficulties or complaints before they develop into substantial legal problems.
- Enabling the development of new rules to express a greater emphasis on online facilitation and early resolution. This facilitation is in the spirit both of ADR (alternative dispute resolution) and of EDR (early dispute resolution).
- Opening up the opportunity to build on existing digital pilots to continue to identify opportunities, where appropriate, for more streamlined hearings that reflect the needs of the users and are more proportionate to the case. This could, where appropriate, be largely on the basis of papers submitted electronically as part of a structured process of making and responding to an online claim and the broader use of technologies such as video hearings and teleconferencing (where separately provided for in existing legislation and rules). This process will be supported, where necessary, by assisted digital support.

Option 3: implement five measures as amendments to the Coroners and Justice Act 2009 to allow:

- **Discontinuance of an investigation where the cause of death becomes clear;**
- **Power to conduct non-contentious inquests in writing;**
- **Use of audio or video links at inquests;**
- **Inquests to be held without a jury if a death is suspected to have been caused by COVID-19 (a notifiable disease);**
- **The merger of coroner areas within a local authority where the new area will not be the entire local authority area.**

39. The first amendment will allow a coroner to discontinue an investigation where the cause of death is found to be natural causes, without a post-mortem examination. This will mean that coroners would no longer need to continue an investigation and hold an inquest where the outcome is already a forgone conclusion. This measure will also address an unnecessary step which is time consuming, costly and adds to the distress of the bereaved family. This measure has been a long-standing policy suggestion in successive Chief Coroner's Annual Reports to the Lord Chancellor since 2015.
40. The second amendment will allow a coroner the discretion to deal with inquests without a hearing in non-contentious cases, with the agreement of the bereaved family and where there is no practical or public interest in doing so. This will assist coroner services deal with the backlog of cases that has arisen as a result of Covid-19 and, in the longer run, help coroners to utilise their court spaces efficiently, freeing up court hours/space for inquests which do need a hearing while saving money. This proposal is also a long-standing Chief Coroner policy suggestion made in Chief Coroner's Annual Reports since 2016
41. The third amendment will allow pre-inquest reviews and inquests to take place where all participants including the coroner, can participate remotely. With a number of coroner areas reporting backlogs of inquests (in particular jury and non-jury complex inquests) this amendment will ensure coroners have the flexibility to start to hold inquests remotely whilst complying with Covid-19 social distancing requirements and will help mitigate backlogs of inquests in the event of a further Covid-19 wave. This will also help reduce delays and the additional distress for bereaved families awaiting the hearing of the inquests into the deaths of their loved ones while freeing up court space for those cases that cannot be heard remotely. This amendment will also create parity with other courts.

42. The fourth measure will seek to replicate Section 30 of the Coronavirus Act into the CJA 2009 on a temporary basis for two years. Coroners may, however, still conduct an inquest with a jury if death is suspected to have been caused by COVID-19, should they wish to do so, where they think there is good reason to do so
43. Only a small proportion of the excess deaths that result from the pandemic are likely to require an inquest, given that the majority will be considered natural cause deaths. However, if all inquests where COVID-19 was a factor required a jury, it would overwhelm already stretched coroner services: it would substantially increase the annual number of jury inquests thereby adding to the time and resources required to conduct them. This would contribute to substantial delays in concluding inquests into deaths where it was suspected COVID-19 was the cause, adding to the distress of bereaved families seeking to know how their loved ones died. It would also add to the delays in non-COVID-19 related inquests (jury and otherwise).
44. Section 30 of the 2020 Act has been welcomed by the Chief Coroner, coroners and the public, and whilst inquests overall have been delayed these provisions will ensure further delays will not be imposed by the need to conduct an inquest with a jury in Covid-related cases.
45. The fifth amendment will allow the merger of coroner areas within an LA where the new coroner area would not be the entire LA area. It is a long-standing central government and more recently Chief Coroner objective to merge coroner areas when the opportunity arises to improve consistency of coroner provision and standardise practice.

E. Cost and Benefit Analysis

46. This IA follows the procedures and criteria set out in the IA Guidance and is consistent with the HM Treasury Green Book.
47. Where possible, IAs identify both monetised and non-monetised impacts on individuals, groups and businesses in England and Wales with the aim of understanding what the overall impact on society might be from the proposals under consideration. IAs place a strong focus on the monetisation of costs and benefits. There are often, however, important impacts which cannot sensibly be monetised. These might be impacts on certain groups of society or data privacy impacts, both positive and negative. Impacts in this IA are therefore interpreted broadly, to include both monetisable and non-monetisable costs and benefits, with due weight given to those that are not monetised.
48. The costs and benefits of each option are compared to option 0, the counterfactual or “do nothing” scenario. As the counterfactual is compared to itself, the costs and benefits are necessarily zero, as is its net present value (NPV).
49. The costs and benefits associated with Option 1, the Employment Tribunals measures, and Option 3, the Coroner’s courts measures have not been quantified and are expected to be minimal. As a result, only a qualitative assessment of their impacts is made in this IA.

Option 1: Transfer procedure regulation and rule making powers to the TPC, and more closely align the ET and EAT with the First-tier Tribunal and Upper Tribunal.

Costs of Option 1

Non-Monetised costs

50. The TPC is likely to incur administration costs as a result of the change as well as for recruiting the additional TPC members. These are expected to be low (estimated at £3.5k per year) and so have not been monetised.

Benefits of option 1

Monetised benefits

51. No monetised benefits are expected.

Non-monetised benefits

52. The key benefit is anticipated to be a quicker response to the need to introduce, amend or revise ET procedures.

53. We expect that, over time, this option will lead to changes in the rules and procedures for the ET and EAT and but the nature of the changes and their impacts will depend on future decisions of the TPC, which cannot be known at this time.

Option 2: Establish a new OPRC for the civil, family and tribunals jurisdictions.

Costs of Option 2

Monetised

54. It is estimated that it will cost the MoJ approximately £10k per year to run the OPRC. The running costs are for travel and subsistence, as well as publications. The £10K figure is based on an extrapolation of the running costs of the existing rule committee. Over a 10 year appraisal period, this gives an NPV of £70k.

55. Other costs, including the digitisation of services that may be brought under the remit of the OPRC are already funded through the HMCTS Court Reform Programme, so the introduction of this legislation does not bring about any additional costs in that regard. Similarly, the duty on the Lord Chancellor to provide additional digital support will already be funded through the Reform Programme.

Non-Monetised Costs

56. There may be wider costs for HMCTS associated with implementing the new rules and processes which the OPRC puts in place. However, as these are not the direct costs of this option, they are not captured in this IA.

Benefits of Option 2

Monetised benefits

57. It has not been possible to identify any monetised benefits associated with this option.

Non-monetised benefits

58. This option will enable the HMCTS court reform programme by facilitating the creation of a simplified rule making process which will in turn deliver simpler and more efficient court processes. However, as any benefits would relate to the new rules and processes themselves, they are not the direct benefits of this option and are not captured in this IA.

59. There could potentially be a greater number of court users using the online rules, depending on which elements of non-money claims, Family and Tribunals cases are added to the list of in scope case types.

Option 3: implement five measures as amendments to the Coroners and Justice Act 2009 to allow:

- Discontinuance of an investigation where cause of death becomes clear;
- Power to conduct non-contentious inquests in writing;
- Use of audio or video links at inquests;
- Inquests to be held without a jury if a death is suspected to have been caused by COVID-19 (a notifiable disease) ;
- The merger of coroner areas within a local authority where the new area will not be the entire local authority area.

Costs of Option 3

Non-monetised costs

60. We anticipate there will be small start-up costs for installing audio visual equipment for virtual hearings (around £10k per court). However, as the vast majority of the 85 Coroners' Courts have already installed such equipment during the current pandemic, and some may choose not to, these additional costs have not been quantified.

61. The running costs of implementing these measures will be borne by LAs. They have not been monetised as they are not expected to be large and would need to be set against the efficiencies these measures will give rise to (e.g., economies of scale through combining Coroner's areas).

Benefits of Option 3

Monetised benefits

62. No monetised benefits are expected with this option.

Non-monetised benefits

63. This option will ensure that coroners' courts are operating in line with other courts, bringing efficiencies to the courts and reducing unnecessary inquest procedures.

64. Coroners and their staff will be able to manage their caseload better by being able to hear inquests remotely or without a hearing at all in non-contentious cases.

65. These measures will also support coroners' courts with post-Covid recovery.

66. By reducing unnecessary inquest procedures, bereaved families and those who support them will benefit from being able to hold the funerals of their loved ones much quickly and from not having the additional stress of unnecessary processes. Bereaved families would benefit from not having to travel to attend inquests, reducing the stress of travel costs and the overall stress of the journey. They would also benefit from more timely inquests.

F. Assumptions and risks

67. It is assumed there are no changes in caseloads as a result of the options in this IA.

68. To the extent that the OPRC allows for court users to resolve disputes without the support of legal services providers, we have assumed that solicitors and other approved professionals will be able to substitute the time they currently spend on dealing with these cases with other work of a similar, or next-best economic value.

G. Wider impacts

Equalities

69. For the equalities impact of the proposal, please see the Equalities Statement that was published alongside this impact assessment.

Better Regulation

70. The ETs measures are not classed as a regulatory provision under the Small Business Enterprise and Employment Act 2015 and so does not score against the department's business impact target.

International Trade

71. There are no international trade implications from the options in this IA.

H. Monitoring & Evaluation

72. The legislation will be reviewed in line with post-legislative scrutiny procedures.