



Llywodraeth Cymru
Welsh Government

PUBLICATION

A new tribunal system for Wales: Draft regulatory impact assessment

The draft RIA sets out an initial cost and benefit assessment of the options to reform the current system of devolved tribunals in Wales.

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Summary

Introduction

1. This is a draft Regulatory Impact Assessment (RIA) supporting the white paper consultation “**A New Tribunal System for Wales**”, which sets out proposals we have developed through our tribunal reform project for a modern system for Wales’ devolved tribunals. The proposals are informed by a significant body of work, including reports of the Commission on Justice in Wales (Commission on Justice in Wales, 2019 - **Justice in Wales for the People of Wales**) and the Law Commission (Law Commission, 2021 - **Devolved Tribunals in Wales Report**), and engagement we have had with key stakeholders.

2. The draft RIA sets out an initial cost and benefit assessment of the options to reform the current system of devolved tribunals in Wales and to shape them into a coherent and unified system. The draft RIA is a developing document, and we are seeking additional and alternative evidence to help inform the final assessment which will form part of an explanatory memorandum published alongside any future Bill to take forward these proposals.

Why is primary legislation required?

3. The white paper includes proposals for primary legislation to bring separate devolved tribunals in Wales into a unified and coherent structure comprising of a First-tier Tribunal for Wales and an Appeal Tribunal for Wales.

4. The devolved tribunals within the scope of our proposals for reform are each governed by their own separate legislative frameworks that have developed piecemeal over time. Unlike many reserved tribunals which were reformed by the Tribunals, Courts and Enforcement Act 2007, the devolved tribunals have

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each largely remained as they were constituted on their creation. Recent developments have seen the creation of the office of the President of Welsh Tribunals by the Wales Act 2017. But that legislation overlays the existing frameworks and does not create a coherent whole.

5. Primary legislation is therefore required to address the issues arising from the largely disconnected current legislative frameworks to put in place a clearer, simpler, more effective and coherent way of operating Wales' devolved tribunal system.

Proposals for primary legislation

6. The white paper makes proposals for primary legislation in the following areas:

Chapter 3: A new structure for Wales tribunal system

We propose to create a unified tribunal system for Wales comprising of two new tribunals, the First-tier Tribunal for Wales and the Appeal Tribunal for Wales, under the judicial leadership of the President of Welsh Tribunals.

Chapter 4: Jurisdictions transferring into the tribunal system

We propose:

- the jurisdictions of the Welsh Tribunals, together with those of the Valuation Tribunal for Wales and school exclusion appeal panels are transferred to the First-tier Tribunal for Wales and organised into chambers
- the further transfer of jurisdictions, be they existing ones or ones created by future legislation, should be considered on a case-by-case basis, and

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- the Appeal Tribunal for Wales should be organised into chambers as appropriate and as appeal jurisdictions are transferred to it and the volume of appeal work develops.

The Welsh Tribunals are defined in section 59 of the Wales Act 2017. They are:

- the Agricultural Land Tribunal for Wales
- the Mental Health Review Tribunal for Wales
- the Residential Property Tribunal for Wales
- the Education Tribunal for Wales
- the Adjudication Panel for Wales
- the Welsh Language Tribunal.

Chapter 5: Independence

We propose:

- all those responsible for the administration of justice in Wales should be under a statutory duty to uphold the independence of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales, and
- the creation of a statutory body arms-length from Welsh Government with operational responsibility for the administration of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales.

Chapter 6: The President of Welsh Tribunals

We propose:

- the President of Welsh Tribunals should be the presiding judge of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales, able to sit as a judge in those tribunals, and
- the role of President of Welsh Tribunals should be enhanced by conferring

new statutory duties and functions on the office.

Chapter 7: Appointments and deployment

We propose:

- a coherent approach for the appointment of members to the First-tier Tribunal for Wales and the Appeal Tribunal for Wales, removing the role of the Lord Chancellor
- in making appointments there should be regard to the need to encourage diversity in the range of persons appointed as members of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales
- terms and conditions, including remuneration, to be set by the Welsh Ministers, and
- a system for the effective cross-deployment of tribunal members across the new tribunal system.

Chapter 8: Complaints and discipline

We propose:

- a uniform procedure for complaints and discipline about the conduct of all tribunal members of the new tribunals, and
- a uniform procedure for complaints about the administration of the new tribunal service.

Chapter 9: Procedural rules

We propose:

- common procedural rules across the new tribunal system as far as

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appropriate, but mindful of the need to accommodate differences between jurisdictions

- each chamber of the First-tier Tribunal for Wales and of the Appeal Tribunal for Wales should have its own set of procedural rules, and
- a Tribunal Procedure Committee for Wales be established, chaired by the President of Welsh Tribunals, to develop and keep up to date procedural rules which would be made by the President subject to them being approved by the Welsh Ministers.

Options

7. This draft RIA considers 4 options:

- Option 1: do nothing
- Option 2: create a unified tribunal system comprising of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales
- Option 3: create a unified tribunal system comprising of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales but with the gradual unification of current devolved tribunals into the new system; and
- Option 4: retain the devolved tribunals and standardise their respective legislative frameworks.

Option 1: Do nothing

8. Under this option, the current structures of the devolved tribunals would be retained and the reasons, as set out above, for reforming current arrangements to put in place a coherent and unified system of devolved tribunals will not be addressed.

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Option 2: Create a unified tribunal system

9. At present each of the devolved tribunals is constituted under its own separate legislative framework. Whilst the Wales Act 2017 established the office of President of Welsh Tribunals and grouped a number of the devolved tribunals as “the Welsh Tribunals”, it overlaid the existing legislative frameworks and did not address the lack of coherence across the existing system of devolved tribunals.

10. Under Option 2, primary legislation would create a coherent and unified tribunal system. In summary, the option envisages the incorporation of the devolved tribunals in respect of which the President of Welsh Tribunals has statutory functions into the First-tier Tribunal for Wales. Other devolved tribunals not currently under the remit of the President would also be incorporated within the new tribunal structure. These include the Valuation Tribunal for Wales and school exclusion appeals panels.

11. Primary legislation would replace the separate pieces of underlying existing legislation for each devolved tribunal whose jurisdiction is being incorporated into the First-tier Tribunal for Wales. We propose the work of the First-tier Tribunal would be organised into chambers on the face of the legislation. The jurisdictions of some existing tribunals could be amalgamated within a chamber and others transferred on their own to a chamber, recognising the specialist nature of particular jurisdictions. We also propose a power for the Welsh Ministers with the concurrence of the President of Welsh Tribunals to add chambers or to amend the allocation of work between chambers.

12. In addition to a new tribunal at first instance, option 2 envisages the creation of the Appeal Tribunal for Wales to hear appeals from the First-tier Tribunal for Wales. Current routes of appeal from the devolved tribunals have developed piecemeal over time and are very much the product of the historical development of the devolved tribunals rather than a coherent approach to

Wales' tribunal system where routes of appeal are an integral part. We anticipate the number of appeal routes in devolved legislation will increase as the Senedd continues to legislate in devolved policy areas.

13. The flexibility designed into the structure of the First-tier Tribunal for Wales and the creation of the Appeal Tribunal for Wales as the appellate body for appeals from the First-tier Tribunal are key components of the proposed new tribunal system, making it flexible and responsive to future demands.

14. Under this option, the new tribunal system would be administered by a statutory body operating at arms-length from Welsh Government. This would ensure a greater degree of structural independence from the Welsh Government as recommended by both the Thomas Commission and the Law Commission.

Option 3: Pursue the gradual unification of the devolved tribunals

15. As with option 2, option 3 envisages the creation of a coherent and unified tribunal system comprising of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales. However, option 3 envisages a phased approach to the incorporation of existing devolved tribunals into the new system. During phase 1 the Welsh Tribunals would be incorporated into the First-tier Tribunal for Wales; and during phase 2 the Valuation Tribunal for Wales and school exclusion appeal panels would be similarly incorporated.

16. Provision could be made in primary legislation for tribunals in phase 2, prior to incorporation, to be subject to the supervision of the President of Welsh Tribunals. Whilst this would provide them with a level of senior judicial oversight and some consistency across the emerging new tribunal system, it would also mean, in the first instance, a more limited form of integration than that delivered under option 2.

Option 4: Standardise existing legislative frameworks of the devolved tribunals

17. Under option 4, neither the First-tier Tribunal for Wales nor the Appeal Tribunal for Wales would be created. Instead, the devolved tribunals would continue to be constituted under their respective legislative frameworks and primary legislation would be used to standardise common arrangements that could apply to them. This would include matters such as appointments, discipline and procedural rules, all of which would also be addressed as part of the unified tribunal system proposed under option 2 and option 3.

18. Option 4 would bring a level of consistency to the devolved tribunals and provide a template for the creation of future tribunals. However, it would not provide flexibility in the way that the work of the devolved tribunals could be organised, and it would not be as responsive to accommodating future demands on the Welsh tribunal system. Under option 4, if an existing tribunal was not a natural home for a new appeal route, the policy options would be either to create a wholly new tribunal or direct the new appeal to the existing UK First-tier Tribunal.

Costs and benefits

19. This draft RIA considers the costs and benefits of the options that have been identified.

Option 1: Do nothing

20. Option 1, do nothing, envisages the current arrangements for the devolved tribunals will continue to subsist. There are no additional costs for this option as

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it is, essentially, maintenance of the status quo. The costs of this option are therefore a baseline assessment of the devolved tribunals as they are currently constituted. The other options, each of which considers varying degrees of transition away from current arrangements, draws on the baseline assessment for comparative purposes.

21. There are no additional benefits associated with this option because the shortcomings identified in current arrangement will not be addressed.

The Welsh Tribunals

22. The caseload of the Welsh Tribunals is set out in Table 1 below, by reference to the number of applications received by each individual tribunal for the most recent complete financial years reported on by the President of Welsh Tribunals (President of Welsh Tribunals [Fourth Annual Report April 2021 to December 2022](#)). The Mental Health Review Tribunal for Wales has the largest caseload of all of the Welsh Tribunals. In financial year 2021-22 it accounted for 1,840 applications out of the total of 2,137 submitted to the Welsh Tribunals, 86% of all applications received.

Table 1: Number of applications to the Welsh Tribunals by financial year

Tribunal	2019 to 2020	2020 to 2021	2021 to 2022
Agricultural Land Tribunal (ALT)	22	13	20
Adjudication Panel for Wales (APW)	2	4	10

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Tribunal	2019 to 2020	2020 to 2021	2021 to 2022
Education Tribunal for Wales (ETW) (previously known as the Special Educational Needs Tribunal for Wales)	172	116	151
Mental Health Review Tribunal (MHRTW)	1,943	1,790	1,840
Residential Property Tribunal (RPT)	112	106	113
Welsh language Tribunal (WLT)	16	13	3

23. As at May 2023, the Welsh Tribunals have a cumulative cohort of 238 tribunal members. They are generally fee-paid and not salaried members. The President of the MHRTW is salaried - the salary is £147,388 effective from 1 April 2022 (**Judicial Salaries by Post**). The daily sitting fee rates for tribunal members is set out in Table 2. There is a category of sitting in retirement judicial offices (sitting in retirement offices were created by the Public Service Pensions and Judicial Offices Act 2022) but there are no members of the Welsh Tribunals who are appointed to sitting in retirement judicial offices.

Table 2: Judicial daily sitting fees rates (effective from 1 April 2022)

Tribunal	Post	Amount £
	President of Welsh Tribunals	946
ALT	President	630

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Tribunal	Post	Amount £
	Legal Member	537
	Other Member	218
APW	President	630
	Legal Member	537
	Other Member	276
ETW	President	724
	Legal Chair	537
	Other Member	273
MHRTW	Legal Member (Restricted Patients' Panel)	671
	Legal Member (non- Restricted Patients' Panel)	538
	Medical Member	523
	Medical Member – preliminary hearing fee	194
	Other Member	244
RPT	President	630

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Tribunal	Post	Amount £
	Legal Member	537
	Surveyor	335
	Other Member	218
WLT	President	633
	Legal Member	539
	Other Member	227

(Judicial Daily Sitting Fees)

24. The Welsh Government is responsible for resourcing the Welsh Tribunals to enable the constituent tribunals to exercise their statutory functions. This includes provision of staff, accommodation, financial and other resources to the Welsh Tribunals which are delivered through the Welsh Tribunals Unit. The Welsh Tribunals Unit is the dedicated delivery team within Welsh Government which provides operational and administrative support to the Welsh Tribunals. Staffed by civil servants, the Unit has a headcount of 36 full-time equivalent (FTE) staff.

25. Tables 3 to 5 below sets out the baseline costs for the Welsh Tribunals looking across 3 financial years, 2019-2020 to 2021-2022. The figures are sourced from the annual reports of the President of Welsh Tribunals and the Judicial Lead of each Welsh Tribunal covering those periods. In the 2021-2022 financial year, the President of Welsh Tribunals reported a spend of £4.09 million, 69% (£2.805 million) committed to tribunal running costs and 31%

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(£1.287 million) committed to Welsh Tribunal Unit running costs, largely the cost of the Units full-time equivalent (FTE) staff complement.

Table 3: Baseline costs of the Welsh Tribunals - financial year 2019 to 2020

	2019 to 2020		
	Members fees and expenses (4) £	Tribunal hearing and other costs £	TOTAL £
Welsh Tribunals reported spend (a)			4,446,000
Reported tribunal running costs (b)			
ALT	20,000	5,000	25,000
APW	30,072	4,006	34,078
ETW (c)	269,042	48,456	317,498
MHRTW (d)	2,590,340		2,590,340
RPT	205,520	11,483	217,004
WLT	24,932	16,847	41,779
Total			3,225,699

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WTU administrative running costs (6e)			1,220,301
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Table 4: Baseline costs of the Welsh Tribunals - financial year 2020 to 2021

	2020 to 2021		
	Members fees and expenses (4) £	Tribunal hearing and other costs £	TOTAL £
Welsh Tribunals reported spend (a)			3,565,246
Reported tribunal running costs (b)			
ALT	10,000	NIL	10,000
APW	43,126	15,682	58,808
ETW (c)	180,884	6,068	186,952
MHRTW (d)	1,784,356		1,784,356
RPT	297,961	2,169	300,130
WLT	23,267	2,662	25,929

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Total			2,366,175
WTU administrative running costs (e)			1,199,071

Table 5: Baseline costs of the Welsh Tribunals - financial year 2021 to 2022

	2021 to 2022		
	Members fees and expenses (4) £	Tribunal hearing and other costs £	TOTAL £
Welsh Tribunals reported spend (a)			4,092,047
Reported tribunal running costs (b)			
ALT	4,000	2,600	6,600
APW	41,370	7,780	49,151
ETW (c)	214,000	8,000	222,000
MHRTW (d)	2,229,845		2,229,845
RPT	285,912	3,634	290,000

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WLT	7,304	196	7,500
Total			2,805,096
WTU administrative running costs (e)			1,286,951

Notes: Tables 3 to 5

- a. Total reported spend for the Welsh Tribunals as published in the annual reports of the President of Welsh Tribunals.
- b. Expenditure as published in each of the individual Welsh Tribunals Annual Reports 2019-2020 to 2021-22.
- c. ETW annual report 2021-2022, SENTW annual reports for 2019-2020 and 2020-2021.
- d. Expenditure for fees and expenses includes Members' training.
- e. MHRTW expenditure on Members' fees and expenses and tribunal hearing and other costs aggregated in MHRTW Annual Reports.
- f. WTU administrative running costs = Welsh Tribunals reported spend – total reported tribunal running costs.

The Valuation Tribunal for Wales

26. The Valuation Tribunal for Wales is established by statute and is a Welsh Government Sponsored Body. A framework document sets out the relationship between the Tribunal and the Welsh Government. The Tribunal hears cases relating to non-domestic rates and council tax. The caseload of the Valuation Tribunal for Wales is set out in Table 6 below ([Valuation Tribunal for Wales Annual Report 2021-2022](#)).

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Table 6: Number of applications and number of Valuation Tribunal for Wales decisions

	2019 to 2020	2020 to 2021	2021 to 2022
Applications received	5,116	20,912*	4,808
Tribunal decisions	879	401	1,070

* High level of rating appeals received due to impact of Covid-19, appeals made on Material Change of Circumstance grounds.

27. The Welsh Government is responsible for resourcing the Valuation Tribunal for Wales. Table 7 below sets out the baseline costs for the Tribunal looking across 3 financial years, 2019-2020 to 2021-2023. Administrative and operational functions supporting the Tribunal are delivered by its body of 14 FTE staff.

Table 7: Baseline costs for the Valuation Tribunal for Wales

	2019 to 2020	2020 to 2021	2021 to 2022
Annual staff costs	720,629	709,042	759,470
Non-staffing costs	350,233	342,337	306,144
Total annual spend	1,070,862	1,051,379	1,065,614

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School exclusion appeal panels

28. School exclusion appeal panels are administered locally, by local authorities. They hear appeals against decisions of school discipline committees to uphold a decision made by a school to permanently exclude a pupil. Data on the number of school expulsion appeals panels that have been convened is not routinely collated, but it has been estimated that there may be around 24 annually, about 1 per local authority ([Public Administration and a Just Wales: Education](#) - March 2020, page 67).

Option 2: Create a unified tribunal system

29. Option 2 is the option that would maximise the benefits of the tribunal reform project by creating a unified and coherent tribunal system for Wales. In summary, it is a whole system approach to reforming current arrangements and it is therefore the option that will generate the highest further costs in addition to the baseline costs set out under option 1.

Establishing the First-tier Tribunal for Wales

30. The work of individual tribunals will be largely unaffected by the creation of the First-tier Tribunal for Wales and the transfer to it of the jurisdictions of those tribunals. The 2 exceptions to this relate to the incorporation of the jurisdictions of the Valuation Tribunal for Wales and school exclusion appeal panels.

31. The Valuation Tribunal for Wales does not operate in the same way as the Welsh Tribunals. It operates in a manner more akin to the lay magistracy with 3 volunteer members hearing cases alongside a professional legal adviser. This contrasts with members of the Welsh Tribunals who receive a daily sitting fee, as outlined in Table 2 above, and sit without a professional legal adviser but with

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a legally qualified member instead.

32. The white paper envisages including the Valuation Tribunal for Wales within the new tribunal system, with its jurisdiction transferred to the Taxation Chamber of the First-tier Tribunal for Wales, but does not recommend what model of adjudication the Tribunal should adopt in future. Consideration will need to be given to that model, and whether members ought to be paid. As an indicative figure, Table 8 below therefore outlines the potential cost implications of moving to a payment structure for members of the Tribunal based on the number of panel meetings in financial years 2019-2020 to 2021-2022. This additional potential annual cost is estimated using the highest and lowest lay member fees of the Welsh Tribunals, as set out in Table 2.

Table 8: Estimated additional costs related to making Valuation Tribunal for Wales members fee-paid

	2019 to 2020	2020 to 2021 (covid-19)	2021 to 2022
Upper estimate	£127,512	£86,940	£151,524
Lower estimate	£100,716	£68,670	£119,682

33. There is also potentially an additional cost relating to the Valuation Tribunal for Wales pension liability. The Tribunal's staff are members of the Local Government Pension Scheme. That scheme is split up into a number of funds and the Tribunals interest is contained in 4 of those funds. If the tribunal's staff were to be transferred into a different pension scheme, exit cost estimates for each of the schemes indicates the total exit cost as at 31 March 2022 is £2.573 million, as detailed in Table 9 below.

Table 9: Valuation Tribunal for Wales pension liability

Pension fund	Estimated exit cost (£Ms)
Clwyd (Flintshire)	0.881
Dyfed	0.069
Greater Gwent (Torfaen)	0.702
RCT	0.921
Total	2.573

34. The white paper proposes that the jurisdiction of school exclusion appeal panels is included in the Education Chamber of the First-tier Tribunal, together with the jurisdiction of the Education Tribunal for Wales. School exclusion appeal panels are funded by local authorities and the transfer of them to the First-tier Tribunal will be an additional cost in the new tribunal system, with a corresponding cost-saving to local authorities. Table 10 below estimates the additional cost based on an estimate of 24 panel hearings annually, as discussed in paragraph 28 above, and using an apportionment of the caseload and members fees and expenses of the Education Tribunal for Wales as set out in Table 1 and Tables 3 to 5 above. There would also be additional administrative work from the extra caseload, which for the purpose of this draft RIA we consider would be absorbed by the current resource allocation for tribunal administration.

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Table 10: Estimated additional costs related to school exclusion appeal panels

	2019 to 2020	2020 to 2021	2021 to 2022
Number of applications to the ETW	172	116	151
ETW reported running costs	£317,498	£186,952	£222,000
Cost per application	£1,846	£1,612	£1,471
Increase number of hearings	24	24	24
Total additional cost	£44,304	£38,688	£35,304

Establishing the Appeal Tribunal for Wales

35. At present, the route of appeal from first instance decisions of most of the Welsh Tribunals are directed to the UK Upper Tribunal, and from some of the Welsh Tribunals they are directed to the High Court. The cost of establishing a Welsh appellate body will therefore see a transfer in cost, namely an additional cost in the new tribunal system in Wales and a corresponding decrease in cost to the UK government.

36. The annual reports for the Welsh Tribunals indicate the volume of onward appeals is low. In 2021-2022, 4 applications for permission to appeal to the Upper Tribunal were granted, and a further two applications were pending. In respect of the Valuation Tribunal for Wales, there were 3 rating appeals to the Upper Tribunal and no council tax appeals to the High Court in 2021 to 2022. This is typical of the number of annual appeals. Table 11 below estimates the

cost for the proposed Appeal Tribunal based on the number of applications for appeal either granted or pending in the last financial year reported. For the purposes of this estimate, the judicial cost is the daily fee-rate of the President of Welsh Tribunals and of a president of one of the Welsh Tribunals. There would also be additional administrative work from the extra caseload of the Appeal Tribunal, which for the purpose of this draft RIA we consider would be absorbed by the current resource allocation for tribunal administration.

Table 11: Estimated additional costs related to the Appeal Tribunal

	Estimate
Applications for appeal granted or pending	9
Estimated judicial time per appeal	1½ days
Judicial cost / day	£1,576
Total additional cost	£21,276

37. We anticipate the volume of work of the Appeal Tribunal for Wales increasing over time as the Senedd legislates and creates new routes of appeal in devolved legislation. The annual running costs for the Appeal Tribunal are therefore likely to increase over time.

Appointing tribunal members

38. Responsibility for, and the process of, appointing members to devolved tribunals is inconsistent. Appointing authority functions generally fall to the Lord

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Chancellor and the Welsh Ministers. Under this option, appointing authority functions would be streamlined and fall to the President of Welsh Tribunals and the Welsh Ministers.

39. Appointment decisions are currently based on clear and transparent selection processes. It is essential such decisions continue to be underpinned by clear and transparent selection processes. The Judicial Appointments Commission (JAC) is the statutory body with responsibility for selecting people for judicial appointments to the Welsh Tribunals where the Lord Chancellor is currently the appointing authority. Where Welsh Ministers are the appointing authority, the JAC manages the selection processes under the terms of an arrangement under section 83 of the Government of Wales Act 2006. There will therefore be an additional cost to the Welsh Government if the President of Welsh Tribunals and the Welsh Ministers assume all appointing authority functions, and a corresponding cost saving to the Lord Chancellor.

40. Table 12 below sets out the tribunal appointment exercises over financial years 2019-2020 to 2021-2022. It shows costs incurred by the Welsh Government for JAC to run recruitment processes for the Welsh Ministers, as well as those recruitments where the Lord Chancellor is the appointing authority and where the processes are part of the JAC's statutory remit, so at no additional cost to the tribunal system in Wales. Over the period covered in Table 12, the Valuation Tribunal for Wales recruited 1 member in both 2019-2020 and 2020-2021 and 6 members in 2021-2022. The Valuation Tribunal for Wales conducts its own recruitment campaigns and costs are met from within the Tribunal's baseline costs set out in Table 7 above.

Table 12: Tribunal appointments – actual costs to the tribunal system in Wales

Appointing authority	Exercise	2019 to 2020 (£)	2020 to 2021 (£)	2021 to 2022 (£)
Welsh Ministers	WLT President	4,771		
	WLT Legal Member	6,995		
	ETW Lay Members x 5		9,014	
Lord Chancellor	ALT Deputy Chair x 2		0	
	ALT Lay Member		0	
	MHRTW Lay Member x 20			0
	MHRTW Legal Member x 19			0
	MHRTW Medical x 14			0
	RPT Legal Member x 9			0

41. The cost of recruitments depends in great part on factors including the number of applications received and the sitting days required for the selection

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panel to interview and so forth. We are exploring with the JAC and with the UK government the practical issues of retaining the JAC to undertake selection processes and to make recommendations for appointments of members to the new tribunal system. As Table 12 indicates, there will be an additional cost to Welsh Government to resource the appointments currently falling to the Lord Chancellor.

Establishing a new arms-length body

42. This option envisages the creation of a body arms-length from Welsh Government with operational responsibility for the new tribunal system. This addresses the fundamental question of whether the independence of the new tribunal system is best served if functions of administering the system are part of or are separate from Welsh Government. The Valuation Tribunal for Wales is already structurally separate from Welsh Government and is established by secondary legislation. A framework document ([Valuation Tribunal for Wales Framework Document](#)) sets out the broad framework within which the VTW operates and details the terms and conditions under which the Welsh Ministers provide funds to it.

43. The Welsh Tribunals Unit and the Valuation Tribunal for Wales have FTE staff complements of 36 and 14 respectively. The baseline costs of the Welsh Tribunals Unit and the Valuation Tribunal for Wales are set out in Tables 3 to 5 and Table 6 respectively. In 2021-2022, the Welsh Tribunals Unit and the Valuation Tribunal for Wales had combined expenditure of £2.046 million on administrative (and largely staff) costs. At this stage, the administrative resource required for the new body is unknown and additional staff may be required to support the body, as is highlighted below. We plan to use the consultation period to engage with staff and trade unions, and we will continue to do so as we develop legislation to implement reform.

44. Creating an arms-length body will give rise to additional annual running

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costs. These will principally arise in relation to operational matters relating to the body’s structural separation from Welsh Government, matters including office accommodation and corporate services such as personnel and finance and accounting. There will also be additional costs arising from the management and governance arrangements for the body, for example its managing Board and the executive structure around that to support its functioning.

45. The Welsh Revenue Authority is a comparator and an illustrative example. It has a Board of 6 non-executive members, including the Chair, and 6 executive members including 2 elected staff members. Its senior executive leadership team at Board level includes the Chief Executive and 2 Chief Officers. Non-executive members are remunerated at a daily rate of £400, £350 and £300 for the Chair, Deputy Chair and Non-executive members respectively ([Welsh Revenue Authority: Annual Report and Accounts 2021 to 2022](#)).

46. Table 13 below estimates additional costs for the management and governance arrangements for the proposed arms-length body. This is an indicative assessment of the costs involved and will be developed as legislative proposals are developed following consultation on the white paper. For example, the white paper asks consultees for views on whether the Chair of the Board should be a non-executive appointment or the President of Welsh Tribunals ex officio.

Table 13: Estimated additional annual costs for the management and governance of the arms-length body

		Rate	Lower estimate (£)	Upper estimate (£)
Non-executive Board members	Chair	£400/day, 36 or 48	14,400	19,200

		Rate	Lower estimate (£)	Upper estimate (3)
		days/year		
	Non-executive Board members (x4)	£300/per day, 10 or 20 days/year	12,000	24,000
Judicial members (see Table 2 for judicial daily fee rates)	President of Welsh Tribunals ex officio	£946/day, 10 or 20 days/year	9,460	18,920
	Judicial Member	£630/day, 10 or 20 days/year	6,300	12,600
Executive members (Welsh Government's average pay costs 2022 to 2023, annual average gross costs)	Chief Executive Officer	Deputy Director – SCS1	120,174	120,174
	Chief Operating Officer	Grade 7	86,731	86,731
Board secretariat and governance support	Board Secretary	SEO	66,364	66,364
	Assistant	EO	40,504	40,504

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		Rate	Lower estimate (£)	Upper estimate (3)
	Board Secretary			
Total estimated additional cost			355,933	388,493

47. In addition to recurring additional annual costs there will be initial set-up costs incurred during the phase for the implementation of the primary legislation creating the new tribunal system and the phase for the establishment of the new arms-length body. As a comparator, as part of the set-up costs of the Welsh Revenue Authority over a 2 year period, estimated Welsh Government non-staff costs of between £0.550 million and £1.2 million was required to set up the Board, to provide audit and ICT services and to pay for accommodation ([Research Briefing Tax Collection and Management \(Wales\) Act 2016](#)). The Valuation Tribunal for Wales is the holder of its own accommodation lease, for example, and there will be costs associated with it as part of the implementation and establishment phases. A more detailed assessment of initial set-up costs and on-going running costs will be developed together with the legislative proposals following consultation on the white paper.

Option 3: Pursue the gradual unification of the devolved tribunals

48. Under this option, the unification of the devolved tribunals in the new tribunal system would be phased. First, the Welsh Tribunals would be incorporated into the First-tier Tribunal for Wales. Second the Valuation Tribunal for Wales and school exclusion appeal panels would be similarly incorporated. The cost and

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benefits identified under option 2 would apply under this option, and the additional costs associated with the incorporation of the Valuation Tribunal for Wales and school exclusion appeal panels would follow the establishment of the new tribunal system.

49. A unified and coherent tribunal system would be established under this option but the benefits from so doing would take longer to realise.

Option 4: Standardise existing legislative frameworks of the devolved tribunals

50. Under this option, the various Welsh Tribunals and the Valuation Tribunal for Wales would remain as distinct individual tribunals and their respective individual legislative frameworks would be retained without creating a unified First-tier Tribunal for Wales or Appeal Tribunal for Wales. Instead, primary legislation would standardise matters such as the appointment of tribunal members, the costs and benefits of which are considered in paragraphs 38 to 41. Other proposed reforms would also be implemented. For example, the jurisdiction of school exclusion appeal panels would transfer to the Education Tribunal for Wales rather than the Education Chamber of the First-tier Tribunal for Wales, the estimated additional costs of which are set out in Table 10 at paragraph 34.

51. There are steps that could also be taken under this option to enhance judicial independence. These include the Valuation Tribunal for Wales coming within the supervision of the President of Welsh Tribunals, and the creation of the proposed arms-length body that would have operational responsibility for the body of retained devolved tribunals, the costs and benefits of which are considered in paragraphs 42 to 47.

52. This option does not, however, future-proof the tribunals system for new routes of appeal created by future Welsh legislation. In these circumstances, policy makers would be faced with the options they have currently, namely:

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identifying an existing devolved tribunal to add a new route of appeal to that tribunal's existing jurisdiction; creating an entirely new tribunal; or directing the new route of appeal to the UK First-tier Tribunal. Creating a new tribunal may be expensive, time-consuming and administratively burdensome. Directing appeal routes to the existing First-tier Tribunal may provide a short-term solution but ultimately risks stunting the evolution of a coherent system of devolved tribunals in Wales.

Summary of costs and benefits

53. Option 1 gives rise to no additional costs. It establishes the baseline costs of the Welsh Tribunals and Valuation Tribunal for Wales, £4.092 million and £1.065 million respectively in 2021-2022, cumulatively £5.157 million (Tables 3-5 and Table 7). Funding is provided by the Welsh Ministers. There are no benefits associated with this option because it does not address any of the shortcomings in the current tribunal system.

54. Under option 2, there are estimated additional annual costs to the recurring baseline established under option 1:

- i. In terms of the First-tier Tribunal for Wales, incorporating the jurisdiction of the Valuation Tribunal for Wales into the Taxation Chamber and the jurisdiction of school exclusion appeal panels into the Education Chamber gives rise to estimated additional annual costs of between £119,686 and £151,524 for the Taxation Chamber and £35,304 for the Education Chamber based on financial year 2021-2022 (Table 8 and Table 10).
- ii. The Appeal Tribunal for Wales has an estimated additional annual cost of £21,276 (Table 11).
- iii. The management and governance of the arms-length body has an estimated additional annual cost of between £355,933 and £388,493 (Table 13).

55. The baseline costs together with the identified estimated additional costs

amount to an estimated total annual running cost for the new tribunal system of between £5.689 million and £5.754 million (£5.157 million in 2021-2022). We know there are further costs to estimate including for appointing tribunal members (Table 12) and for matters such as training. We will develop the estimate of additional annual costs as we develop this draft RIA alongside legislative proposals.

56. Under option 2 there are also initial one-off costs:

- i. The establishment of the proposed arms-length body will attract set-up costs and, based on the Welsh Revenue Authority as a comparator these could be between £0.550 million and £1.200 million (paragraph 47).
- ii. Transfer of the Valuation Tribunal for Wales attracts a potential pension liability for exiting the Local Government Pension Scheme of £2.573 million. A detailed assessment of potential liabilities will be developed together with the legislative proposals following consultation on the white paper.

57. Option 2 gives rise to a number of on-going benefits:

- i. The new tribunal system provides for better protection of judicial independence and is better compliant with the rule of law. It gives a role for senior judiciary in the running of the tribunal system.
- ii. It takes a whole system approach by creating a unified and coherent tribunal system with consistent processes relating to appointment of tribunal members, complaints and discipline and setting procedural rules. The unified system will avoid the lack of clarity and uncertainty that currently arises when there is a variety of approaches, or even no settled approach at all.
- iii. It enables comprehensive senior judicial oversight of the entire devolved tribunal system by extending the supervisory function of the President of Welsh Tribunals across those devolved tribunals currently out with the President's purview.
- iv. With the creation of Wales' first appellate body, the Appeal Tribunal for Wales, it addresses the currently fragmented approach to onward appeals

and gives an opportunity to build judicial expertise in Wales.

- v. It acts to future-proof the tribunal system in Wales by designing a flexible structure capable of absorbing other existing routes of appeal and those created by future devolved legislation. It avoids the costs of creating new tribunals, and matters including appointing and funding judicial leads and tribunal members and making new procedural rules.
- vi. It increases the opportunity for administrative efficiency by pooling resources and expertise in place of duplicating arrangements which is more likely with distinct standalone tribunals.

58. Option 3 is a variation of option 2 and the costs identified under option 2 apply, but would be realised more gradually. Under option 3, a unified and coherent tribunal system would be established, but the benefits from so doing would take longer to realise.

59. Option 4 realises some of the benefits delivered by options 2 and 3 in terms of standardising matters such as appointment of tribunal members and enhancing judicial independence. It therefore gives rise to many of the costs identified under option 2, as set out above. It does not, however, future-proof the tribunals system for new routes of appeal created by future Welsh legislation and risks stunting the evolution of a coherent system of devolved tribunals in Wales.

60. Option 2, to create a unified tribunal system comprising of the First-tier Tribunal for Wales and the Appeal Tribunal for Wales, is the favoured option. However, the costs and benefits associated with it as set out in this draft RIA will be developed and that work will inform legislative proposals to implement reform.

Impact assessments

61. We have prepared a draft integrated impact assessment (IIA) to support the white paper consultation. We will publish this alongside the white paper to set out our initial assessment and to seek additional and alternative information to support the ongoing assessment of impacts as we develop our legislative proposals following the consultation. We have not undertaken a separate Justice Impact Assessment at this stage as the impact of the proposals set out in the White Paper on the justice system are examined throughout the draft RIA and the draft IIA. They will be considered further as the draft RIA and draft IIA are developed alongside any future primary legislation to take forward these proposals.

62. The most significant positive impacts of our proposals include:

- i. placing the principle of judicial independence at the heart of Wales' tribunal system
- ii. making devolved tribunals more accessible for tribunal users through the more coherent unified structure and means to set modern and up-to-date tribunal rules
- iii. enhancing and promoting access to justice for the people of Wales over the long-term by future-proofing the tribunal system so that as devolved law continues to grow, further routes of appeal can be absorbed with very little disruption, enabling our tribunal justice infrastructure to grow and evolve over time
- iv. laying the foundation for a future where justice is devolved, and Wales administers its own wider system of courts and tribunals.

63. The most significant negative impacts of our proposals will be the cost of operationalising the reforms made by the legislative change we propose and the recurring annual costs to resource the new tribunal system. These costs will fall to the Welsh Government.

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Post-implementation review

64. As part of the tribunal reform project, of which primary legislation is a key deliverable, we will develop an implementation plan to operationalise the reforms made by the legislative changes we propose.

65. We will work closely with key stakeholders to design and develop a post implementation review of the legislative changes our proposals will deliver, as well as a review of the delivery of the tribunal reform project.

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