

Title: Court and Tribunal Fee Remission Reform IA No: Lead department or agency: Ministry of Justice Other departments or agencies: Her Majesty's Courts and Tribunals Service (HMCTS) and the UK Supreme Court	Impact Assessment (IA)		
	Date: 17 April 2013		
	Stage: Consultation		
	Source of intervention: Domestic		
	Type of measure: Secondary legislation		
Contact for enquiries: mojfeespolicy@justice.gsi.gov.uk			

Summary: Intervention and Options	RPC Opinion: RPC Opinion Status
--	--

Cost of Preferred (or more likely) Option

Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-Out?	Measure qualifies as
£m	£m	£m	No	NA

What is the problem under consideration? Why is government intervention necessary?
 HMCTS and the UK Supreme Court provide fee remissions (full or partial fee waivers) to users of its fee charging services to ensure that access to justice is protected for individuals who are less well off. In 2011/12 approximately £26m of income was forgone via remissions in HMCTS. The MoJ, and external stakeholders, believe that the current remission system could be improved, making it better targeted, simple to use and more efficient. Government intervention is required to reform the fee remission system as the Lord Chancellor has statutory responsibility for the fees order in which the fee remissions eligibility criteria are contained. The system will also need to be compatible with Universal Credit by October 2013.

What are the policy objectives and the intended effects?
 The objective is to create a single system of fee remissions which is simple to use, more efficient, better targeted and compatible with Universal Credit. In particular the policy objective is to create a remissions system which is:

- well-targeted and affordable, assisting those genuinely unable to afford a fee, while minimising the administrative cost.
- simple and transparent, straightforward to understand for applicants who apply and for staff to administer.
- consistent, in terms of both the criteria in different business areas and how the criteria are applied.

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

Option 0: Do nothing, maintain the current eligibility and scope of the existing remissions systems with the exception of the planned extension of the HMCTS system to the Employment Tribunal and the Employment Appeal Tribunals

Option 1: Introduce Universal Credit as passporting benefit to the existing remissions systems

Option 2: New remissions system which introduces capital test and new income test

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 2016					
Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro No	< 20 No	Small No	Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded:		Non-traded:

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:  Date: 17 April 2013

Summary: Analysis & Evidence

Policy Option 1

Description: Option 1: introduce Universal Credit + annual earnings below £6000 as a qualifying (passporting) benefit under Remission 1 to the existing remissions systems

Price Base Year 2013/14	PV Base Year 2013/14	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: £0

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low		1		
High				
Best Estimate	Negligible		£0.5m	£5m

Description and scale of key monetised costs by ‘main affected groups’

Transition costs for HMCTS including from reissuing forms and guidance and minor staff training, expected to be negligible at £3000.

We have not yet determined the level at which we would “passport” Universal Credit recipients but for illustrative purposes we have used a threshold of ‘Universal credit with earnings of less than £6000’ in this Impact Assessment.

This illustrative criterion has been identified as a potential passported benefit on the basis that this matches, as far as it is possible to do so, the cost of the current system. It has not been possible to deliver a perfect match and the UC + £6000 threshold will result in a few additional court users becoming eligible for fee remissions who would narrowly fail the income test. As a result this option would result in a small increase in the HMCTS annual cost of remissions.

Other key non-monetised costs by ‘main affected groups’

There may be a minimal familiarisation costs to HMCTS staff in transition.

There is a possibility that the volume of remissions will increase slightly relative to Option 0. This could result in a small increase in the administrative costs of processing remissions.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low		1		
High				
Best Estimate			£0.5m	£5m

Description and scale of key monetised benefits by ‘main affected groups’

As this option results in a slight increase in eligibility for a full remission there is a benefit to users, some of whom will now be eligible for a full rather than a partial remission. This benefit equals the additional cost to HMCTS.

Other key non-monetised benefits by ‘main affected groups’

Recipients of Universal Credit will be passported under Remission 1, reducing the administrative burden on HMCTS users to that incurred when considering their application under Remissions 2 or 3.

Key assumptions/sensitivities/risks

These figures assume take up of remissions does not change due to increased passporting. If take-up of passported remissions is higher, savings to MoJ relative to the ‘do nothing’ option would be lower.

See the section on risks and assumptions for more details.

Impact on admin burden (annual, £m):			Impact on policy costs (£m):			In scope
Costs: £0	Benefit: £0	Net: £0	Costs:	Benefits:	Net:	No

Summary: Analysis and Evidence

Policy Option 2

Description: Option 2: Introduce new system with capital test and new income test

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate:
2013/14	2013/14	10			£5m

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low				
High				
Best Estimate			£5m	£55m

Description and scale of key monetised costs by ‘main affected groups’

Transition costs including in reissuing forms and guidance, staff training and changes to the IT system expected to be £150-200k in 2013/14. This is a high level estimate; as such our actual transition costs could be considerably lower.

This option will reduce the eligibility for full fee remissions which means that some court and tribunal users will have to pay either a full or partial fee where they previously paid nothing, costing users an additional £5m a year on average.

Other key non-monetised costs by ‘main affected groups’

There may be an administrative burden as staff familiarise themselves with the new remissions criteria. The introduction of the capital test will require applicants who previously applied under remission 1 to provide more information with their application than under the previous system.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low				
High				
Best Estimate			£5m	£65m

Description and scale of key monetised benefits by ‘main affected groups’

By providing an amended remissions system, taxpayers’ subsidy of fees would be reduced by an average of £5m per annum.

As fewer remissions applications will need to be processed there is an administrative saving of roughly £1m per annum

Other key non-monetised benefits by ‘main affected groups’

By providing a single and consistent remissions system across the courts and tribunals, both HMCTS and HMCTS users will benefit. Users who previously applied for a remission under remission 2 and 3 criteria will also benefit from the simplified income test.

Both the general taxpayer and society as a whole benefits from a move towards effectively targeting the remissions system to ensure that those who can afford to pay a fee or contribution to a fee do so.

Key assumptions/sensitivities/risks

We have assumed that the Family Resources Survey accurately reports the level of capital held and that applicants will report their capital honestly. If there is underreporting, we estimate that savings could fall by around £3m annually.

We have assumed take-up rates remain unchanged whereas in reality a simpler system may result in greater take-up of remissions

See the section on risks and assumptions for more details.

Impact on admin burden (annual, £m):			Impact on policy costs (£m):			In scope
Costs: £0	Benefit: £1m	Net: £1m	Costs:	Benefits:	Net:	No

Evidence Base (for summary sheets)

Problem Under consideration

1. In 2011/12 the cost of running the non-criminal business administered by Her Majesty's Courts and Tribunals Service (HMCTS) was around £713m. Of this amount 67% was funded through fees (£480m) with the remaining 33% funded by the taxpayer (£233m) as part of the Ministry of Justice's spending settlement. This amount is made up of two elements:
 - a. fees set below full-cost levels, i.e. the fee charged does not cover the actual cost to the court of processing the work being charged.
 - b. fee income foregone under a system of fee remissions (waivers). In 2011/12 the total value of remissions granted was £27.8m¹.
2. The Government's overall aim is to reduce the taxpayer subsidy for the civil business by ensuring that fee income covers 100% of the cost of providing services, minus the income foregone to the remission system. In other words, we wish for the taxpayer contribution to be limited to those who can't afford to pay fees with the user paying where it is possible for them to do so. The policy of full-cost recovery ensures that, as far as possible, users pay for the service they receive while access to justice is protected for those who cannot afford fees. Separate cost recovery targets have been agreed with Her Majesty's Treasury for the tribunal business with the provision of fee remissions to ensure that access to justice is not denied through inability to afford prescribed fees.
3. The proposals in this consultation paper are part of the Government's strategy to protect access to justice through a well-targeted system of fee remissions. The review of the fee remissions system is prompted by three factors: the operational benefits presented by a single system across the civil and tribunal business, the need to amend the system in light of the changes brought by Universal Credit and a desire to improve upon the existing system.
4. At present there are variations between the remission systems currently in use across courts and tribunals. The current fee remission system used in most courts (referred to as the HMCTS system) was introduced in 2007 and has three elements, also known as qualifying eligibility criteria:
 - Remission 1 - an automatic full fee remission for those in receipt of stated qualifying means-tested benefits, known as a 'passporting' benefit ;
 - Remission 2 - a full fee remission for those whose gross annual income is calculated to be lower than stated thresholds; and
 - Remission 3 - a full or partial fee remission based on an income and expenditure means test to calculate monthly disposable income.
5. **Annex A** contains a more detailed summary of the current HMCTS system. However a number of different remissions systems currently operate in the Court of Protection and across fee charging tribunals and the Gender Recognition Panel. **Annex B** contains more detail about the various remissions systems currently in use.

Rationale for intervention:

6. The review the operation of the remissions systems across all courts and tribunals was prompted by a number of factors. First, a 2009 independent review of the courts remissions system² found the existing system to be well targeted but overly complex. Secondly, the existing courts remissions

¹HMCTS annual accounts 2011/12. Includes remissions in the First tier immigration and asylum tribunal, which is not included in this consultation

² "Is the 2007 court fee remission system working?" PricewaterhouseCoopers LLP Ministry of Justice Research Series 15/09 December 2009 webarchive.nationalarchives.gov.uk/20100111120959/www.justice.gov.uk/publications/docs/2007-court-fee-remission-system.pdf

system was criticised in response to the consultation on Employment Tribunal (ET) fees³ as too generous by business respondents and not generous enough by other respondents. Finally, the vast majority of remissions are granted to those in receipt of certain benefits. It has therefore been necessary to review the remissions system to ensure that it continues to function effectively following the changes to be brought by Universal Credit.

7. Government intervention is required to reform the fee remission system as the Lord Chancellor has statutory responsibility for the fees orders in which the fee remissions eligibility criteria are contained.

Policy objective

8. The policy objective of these proposals is to ensure that there is access to justice through a well-targeted system of fee remissions. We aim to achieve this by creating a single system of fee remissions (waivers) for all courts and tribunals which is simple to use, more efficient and better targeted. In particular, the system should meet the following objectives:
 - **Well-targeted and affordable**, assisting those genuinely unable to afford a fee, while minimising the administrative cost. The system should continue to protect access to justice irrespective of the level of fee to be paid. Eligibility for a fee remission should be based on an individual's ability to afford the fee in question, wherever it is charged.
 - **Simple and transparent**, straightforward for applicants who apply and as straightforward as possible for court staff to understand and administer. The system should be transparent, with the qualifying criteria well publicised and easy to understand. As far as possible the system should rely on information and evidence that is generally easy for applicants to provide.
 - **Consistent**, in terms of both the criteria applicable in different business areas or type of claim and how the criteria are applied in practice in individual courts and tribunals.

Groups Affected

9. HMCTS users: individual⁴ litigants, appellants and defendants using one of the following fee charging courts or tribunals:
 - Civil courts (England and Wales), which deal with resolving civil disputes across a range of areas including debt, personal injury, consumer and contract law and protecting individual liberties.
 - The High Court (England and Wales), a senior court which deal with complex and high value family, civil and probate cases (in the 'first instance' and cases referred to the High Court);
 - The Court of Appeal (England and Wales), which deal with appeals from lower courts (such as divisions in the High Court);
 - Family courts (England and Wales), which deal with the breakdown of families, of parenting and of relationships between couples;
 - Magistrates Courts (England and Wales), which deal with criminal cases but also hears some civil and family cases. The proposals will cover only (non-criminal) civil and family cases in these courts;
 - Court of Protection (England and Wales), which deals with decision making for people who may lack capacity;
 - Probate services (England and Wales), which deal with a person's estate when they die;

³ "Charging Fees in Employment Tribunals and the Employment Appeals Tribunal" Response to consultation 13 July 2012: consult.justice.gov.uk/digital-communications/et-fee-charging-regime-cp22-2011

⁴ The fee remission system is only available to individual users of a court or tribunal, with the exception of that used in the UK Supreme Court, where the Chief Executive has the power to remit or reduce a fee for charitable or not for profit organisation.

- UK Supreme Court (UK) which is the final court of appeal for civil cases in UK and for criminal cases in England, Wales and Northern Ireland.
 - All HMCTS operated fee charging Tribunals, with the exception of the Immigration and Asylum Tribunal which are specialist judicial bodies which decide disputes in a particular area of law:
 - Employment Tribunals (ET) (England, Scotland and Wales), which deal with disputes relating to employment;
 - Employment Appeal Tribunals (EAT) (England, Scotland and Wales), which deal with appeals from the ET;
 - Gambling Appeals (England, Scotland and Wales), which deal with appeals against the decisions of the Gambling Commission
 - Gender Recognition Panel (UK), which grant legal recognition of a person's acquired gender (this is the only avenue in the UK for such legal recognition);
 - Leasehold Variations Tribunals⁵ (LVT) (England), which deal with various types of dispute relating to residential leasehold property;
 - Residential Property Tribunal⁶ (RPT)(England), which deal with disputes relating to council or park homes; and
 - Upper Tribunal (Lands Chamber) (England and Wales), which deal with disputes concerning land (including appeals from the LVT and RPT)
10. HMCTS and the staff of the Supreme Court – administrators who process fee remission applications in the courts and tribunals listed above.
11. The taxpayer – the subsidy currently provided by the UK taxpayers towards the fee remissions system would be affected.

One-in-One-out Methodology

12. As this proposal relates only to changes to the remissions system for individual court users, there is no evidence of the proposal resulting in a change in the level of regulatory activity, and so it is out of scope of 'One-in, One-out' in accordance with the current One-in, One-out Methodology.

Description of options considered (including do nothing)

Description of options

13. This impact assessment identifies both monetised and non-monetised impacts from society's perspective, with the aim of understanding what the net social impact to society might be from implementing these options. The costs and benefits of the option are compared to the "do-nothing" option. Impact assessments place a strong emphasis on the monetisation of costs and benefits. However there are important aspects that cannot readily be monetised. These might be distributional impacts on certain groups of society or changes in equity or fairness, either positive or negative. These impacts are explored in the equality analysis in **Annex C**.

⁵ From the 1st July 2013 the Property Chamber of the First-tier Tribunal will be formed; merging the Leasehold Valuations Tribunal, the Residential Property Tribunal (which both charge fees), the Agricultural Land Tribunal and the Adjudicator to HM Land Registry Tribunal (which do not currently charge fees).

⁶ From the 1st July 2013 the Property Chamber of the First-tier Tribunal will be formed; merging the Leasehold Valuations Tribunal, the Residential Property Tribunal (which both charge fees), the Agricultural Land Tribunal and the Adjudicator to HM Land Registry Tribunal (which do not currently charge fees).

14. We considered the following options:

- Option 0: Do nothing; maintain the current eligibility and scope of the HMCTS remission system, with the exception of the planned extension of the HMCTS system to the Employment Tribunal and Employment Appeal Tribunal.
- Option 1: Introduce Universal Credit as passporting benefit to the existing remissions system
- Option 2: Introduce a new system with a capital test and new income test

15. Note that figures throughout this paper are rounded and so may not add up precisely.

Base case /Option 0: Do nothing - maintain the current eligibility and scope of the existing remissions systems, with the exception of the planned extension of the HMCTS system to the Employment Tribunal and Employment Appeal Tribunal

Description of Option 0:

16. Under the 'do nothing' base case the fee remissions system would maintain the current eligibility and scope of the existing remissions systems, with the exception of extension of the HMCTS remissions system to the Employment Tribunal and Employment Appeal Tribunal when fees are introduced in July 2013. We have also considered in our base case the impact of changes to Legal Aid from April 2013 and the planned national roll out of Universal Credit from October 2013.

17. The government response⁷ to 'Introducing fees in employment tribunals (ET) and Employment Appeal Tribunal' (EAT) consultation paper stated that fees would be introduced for the users of the Employment Tribunal and Employment Appeal Tribunals across England, Scotland and Wales in 2013. In order to protect access to justice for those unable to afford employment tribunal fees, it was decided that the HMCTS remissions system would be used in the ET and EA. Subject to the approval of the necessary secondary legislation by Parliament, ET and EAT fees will be included in the scope of current fee remission system, irrespective of whether the fee remission system is reformed. As such, we have considered the benefits and costs of this policy in our base case.

18. Changes to legal aid in the Legal Aid, Sentencing and Punishment of Offenders Act will come into force on 1 April 2013. The changes to legal aid will restrict its scope to certain types of cases. We anticipate that a portion of those no longer eligible for legal aid (who would have previously had their fees met from the legal aid fund) will instead choose to use the fee remissions system. As legal aid changes will impact the current fee remission system, irrespective of whether the fee remission system is reformed, we have considered the benefits and costs of this policy in our base case.

19. Universal Credit is a new working age benefit that will bring together a range of benefits into a single monthly benefit. Universal Credit is planned for a national launch in October 2013 and will have a limited pathfinder in the Northwest from April 2013. Universal Credit will replace nearly all of qualifying (passporting) benefits of Remission 1⁸ by 2017. Under the 'do nothing' base case, we have considered the benefits and costs of the transition to Universal Credit (in 2013/14) under the assumption that we 'do nothing' and do not introduce Universal Credit as a qualifying benefit for Remission 1.

Costs/benefits of Option 0

20. The 'do nothing' option is the baseline against which the other options are compared. As such there are no costs or benefits associated with it.

21. For the baseline we have modelled the impact on remissions of a number of changes:

⁷ consult.justice.gov.uk/digital-communications/et-fee-charging-regime-cp22-2011/results/employment-tribunal-fees-consultation-response.pdf. Published 13th July 2012.

⁸ Universal Credit will replace: income-based Jobseeker's Allowance, income-related Employment and Support Allowance, Income Support, Child Tax Credits, Working Tax Credits and Housing Benefit.

- Remissions costs will increase following the introduction of fees into Employment Tribunals.
- An anticipated rise in the volume of remissions as a result of changes to the legal aid system from 1 April 2013. We expect that the majority of people who would have had their fee paid as a result of being in receipt of legal aid will now apply for a remission.
- The introduction of Universal Credit will reduce over time the numbers of those in receipt of benefits that would demonstrate eligibility for a full remission under Remission 1, and will ultimately cease to exist. We therefore expect take up for Remission 1 to fall as Universal Credit is introduced as take up rates for Remissions 2 and 3 to increase.

22. All of these changes will therefore already be included in the baseline and are not considered as additional costs/savings for Options 1 and 2.

Option1: Introduce Universal Credit as a passporting benefit under the existing remissions systems

Description of Option 1

23. Option 1 would maintain the current fee remissions system (as outlined in the Option 0 'base case'), except for the introduction of 'Universal Credit with earnings of less than £6000' (UC+£6,000) as an additional qualifying ('passporting') benefit under Remission 1 in the HMCTS system and in the other remissions systems in operation.

24. Universal Credit is a new working age benefit that will bring together a range of benefits into a single monthly benefit. Universal Credit is planned for national launch from October 2013 with a limited pathfinder (pilot) in the North West of England from April 2013. Universal Credit will replace nearly all of the qualifying (passporting) benefits of Remission 1⁹ by 2017.

25. We have not yet determined the level at which we would "passport" Universal Credit recipients but for illustrative purposes we have used a threshold of 'Universal credit with earnings of less than £6000' in this Impact Assessment. This illustrative criterion has been identified as a potential passported benefit on the basis that this matches, as far as it is possible to do so, the cost of the current system.

26. This option proposes to introduce 'Universal Credit with earnings of less than £6000 as an additional qualifying ('passporting') benefit during the transition period from 2013 to 2017 (approximately). We have analysed the costs and benefits for the 2013/14 year, during which we will take account of users in receipt of both Universal Credit and the qualifying benefits of Remission 1 it replaces, as users could be in receipt of either during the transition, and have assumed a gradual transition from existing passporting benefits to UC + £6000 up to 2017.

Costs of option 1

Transition costs

Monetised costs to MoJ

27. We expect to incur costs of approximately £3000 in 2013/14, from changes to user forms and guidance, changes to staff guidance and minor staff training costs.

Non-monetised costs to MoJ

28. There may be minimal familiarisation costs to HMCTS staff.

⁹ Universal Credit will replace income-based Jobseeker's Allowance, income-related Employment and Support Allowance, Income Support, Child Tax Credits, Working Tax Credits and Housing Benefit.

On going costs

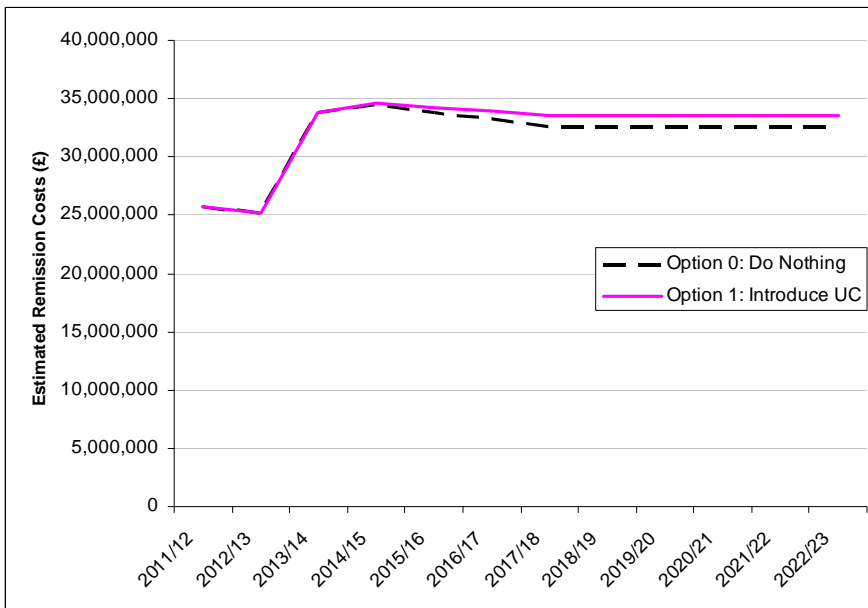
Monetised costs to HMCTS users

29. No monetised costs to HMCTS users have being identified.

Monetised costs to MoJ

30. By introducing UC+£6,000 as a qualifying passporting benefit a few individuals who would have narrowly failed the income test would become eligible for fee remissions under this option. Eligibility for full fee remissions therefore increases from 32% to 34% (see Chart 2 below). As a result there would be a corresponding increase in the cost of fee remissions. This is likely to be an average of around £0.5m a year (see Chart 1 below).

Chart 1: Estimated gross cost to HMCTS of remissions under Option 1



31. The additional cost of the remission payments results in a 10 year Net Present Cost (NPC) to the MoJ of £5m for Option 1.

Non-monetised costs to MoJ

32. By maintaining the current fee remissions system we would continue to operate a system which can be complex and time consuming for HMCTS staff who may need to process a significant amount of hard copy evidence, particularly in relation to Remission 2 and 3 applications. While we do not hold data on the number of fee remission applications refused due to providing insufficient evidence or other application errors, anecdotally we are aware this is not uncommon, resulting in more administration for staff.

33. In addition there is the possibility of a small increase in remission applications as eligibility could be slightly higher. This would result in a small increase in the administrative cost of processing the applications.

Non-monetised costs to society

34. Retaining the existing system could mean that some users will continue to find it complex and time consuming to use.

Benefits of option 1

Transitional benefits

Monetised transitional benefits to MoJ

35. No monetised transitional benefits to HMCTS have being identified.

On going benefits

Monetised benefits to HMCTS users

36. As discussed above, there will be a slight increase in the eligibility for fee remissions if we introduce UC+£6,000 as a qualifying passporting benefit. This will benefit a small number of HMCTS users who will now be able to access a court or tribunal with no fee. This benefit will be an average of around £0.5m a year with a Net Present value (NPV) of £5m.

Monetised benefits' to HMCTS

37. No monetised benefits to HMCTS.

Non-monetised benefits to HMCTS users

38. As stated, under this Option 1, a majority of users in receipt of Universal Credit + £6000 will be 'passport' to a full fee remission under Remission 1 (rather than being assessed under Remission 2 or Remission 3). This may benefit to users in receipt of Universal Credit, as they will avoid assessment under Remission 2 or Remission 3. Assessment under Remission 3 in particular can be complex and requires users to provide a significant amount of hard copy evidence. While we do not hold data on the number of fee remission applications refused due to providing insufficient evidence or other application errors, although anecdotally we are aware this is not uncommon.

Non-monetised benefits to MoJ

39. As stated, under this Option 1, a majority of users in receipt of Universal Credit + £6000 will be 'passport' to a full fee remission under Remission 1 (rather than being assessed under Remission 2 or Remission 3). This will have a significant non-monetised benefit to users in receipt of Universal Credit, as they will avoid assessment under Remission 2 or Remission 3. Assessment under Remission 3 in particular can be complex and requires HMCTS staff to consider a significant amount of hard copy evidence. While the Government believes it is a continual benefit that remissions are targeted to those who genuinely can not afford a fee (which is assured by the requirement of evidence from users), the Government seeks to balance this with the need for a simpler process which avoids errors. While we do not hold data on the number of fee remission applications refused due to insufficient evidence or other application errors, anecdotally we are aware this is not uncommon, resulting in more administration for HMCTS staff.

Non-monetised benefits to society

40. The fee remissions system benefits our society by providing access to justice for those court and tribunal user who are unable to afford a fee. By increasing the number applicants who can be assessed under Remission 1 (and therefore avoiding the more complex and time Remission 2 and Remission 3 applications), we potentially reduce the amount of court users who are required to apply under the more complex Remissions 2 and 3 processes.

Net Impact

41. All costs and benefits are negated in net terms as any savings to HMCTS users of increased levels of remissions are a cost to the MoJ. The expected NPV of this option is therefore £0m.

Option 2: Introduce new single fee remission system with capital test and new income test

Description of Option 2:

42. Option 2 would replace the existing fee remissions systems with a unified system of remissions across all courts and tribunals. It would also introduce a capital test to assess eligibility for a remission and a simplified income test, with a greater level of contribution required from those who receive a partial remission.
43. Option 2 would provide a single remission system to users of all HMCTS operated courts and tribunals (as detailed in paragraph 9) and the UK Supreme Court. Currently eligibility for remissions varies by court or tribunal.
44. At present an individual's disposable household capital (e.g. savings and investments) is not taken into account when considering eligibility for a remission. Option 2 would have the effect that those with disposable household capital of £3000 or more would be required to pay any fee up to £1000, those with capital over £8000 will be required to pay any fee up to £4000, and those with capital over £16000 will be required to pay any fee. The disposable capital assessment proposed is based on the test which applies to civil legal aid scheme, but simplified in several respects. **Annex D** provides further details.
45. Option 2 also includes a simplified income test for remissions which offers both a full and partial fee remission. This would apply to those who have passed the disposable capital test. This would introduce one income test based on the monthly gross benefit unit income thresholds set out in the table below:
46. Applicants in receipt of certain specified benefits (see annex E) and those with income below these thresholds will receive a full fee remission if they also pass the capital test.
47. Those with income above the threshold will be required to contribute £5 towards their fee for each additional £10 income. However a gross income cap would be introduced so that if an applicant's gross income is more than £4,000 above the income threshold they are not eligible for any fee remission.

Table 1: Monthly gross income thresholds

Gross income with:	Single		Couple	
	Monthly threshold	Annual equivalent	Monthly threshold	Annual equivalent
No children	1,085	13,000	1,245	14,940
1 child	1,330	15,960	1,490	17,880
2 children	1,575	18,900	1,735	20,820
£245 added for each additional child				

Transition costs

Monetised costs to MoJ

48. We expect to incur costs of approximately £150,000 to £200,000 in 2013/14, from changes to user forms and guidance, changes to staff guidance, minor changes to IT systems and staff training costs.

Non-monetised costs to MoJ

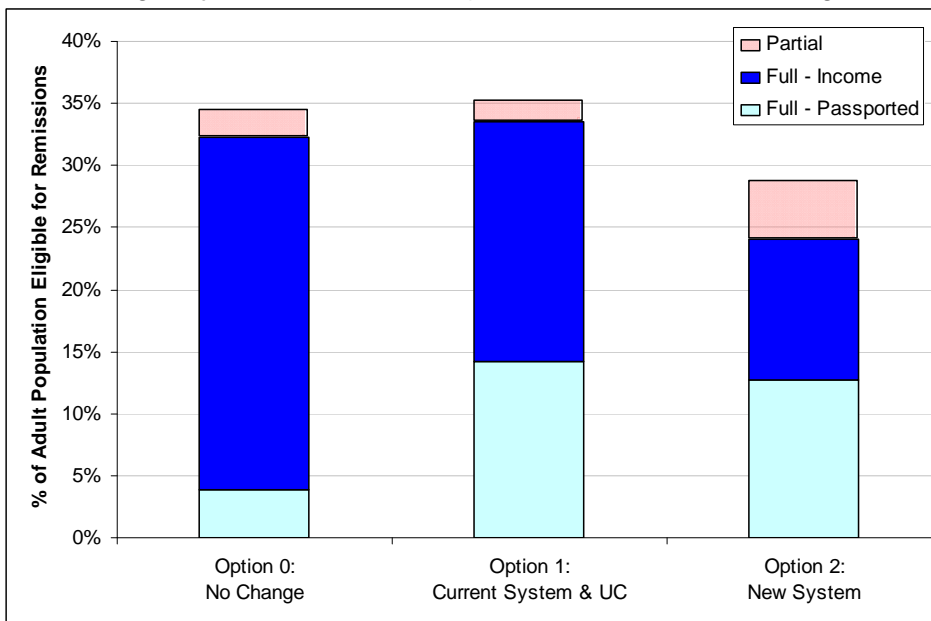
49. There may be minimal familiarisation costs to HMCTS staff.

Ongoing costs

Monetised costs to HMCTS users

50. Introducing the new fee remissions system will reduce eligibility for fee remissions. Under Option 0 eligibility for full fee remissions is around 32% with 2% eligible for partial fee remissions. Under Option 2 eligibility for full fee remissions falls to 24%, mainly due to the introduction of a capital test but also as a result of the lower partner rates in the income thresholds. More people will, however, be eligible for partial remissions under the new system (5%).

Chart 2: Eligibility for fee remissions (Partial remissions at average remitted fee)



51. As a result of this fall in eligibility for full fee remissions we expect the value of remissions paid to HMCTS users to fall. Compared to Option 0 remissions could fall by an average of around £5m a year with a 10 year NPC of £55m (see Chart 3 below).

52. There is however a large amount of uncertainty in these estimates, especially around reductions from the capital test. If we assume 46% of applicants underreport their capital in order to qualify for fee remissions, remission payments would increase by around £3m a year.

53. For a detailed breakdown of the equality impacts of Option 2 on users, please see **Annex C**.

Monetised costs to MoJ

54. No monetised costs to HMCTS have been identified.

Non-monetised costs to HMCTS users

55. The introduction of the capital test will require applicants who previously would have applied for a remission to submit more information with their application than under the previous system, which will be more time consuming. This effect is most likely to occur for those who apply for a remission on the basis of a receipt of benefits. The reduction to the evidence requirement for the income test may mean that the impact is roughly neutral for those who would have previously applied under Remission 2 or 3.

Non-monetised costs to MoJ

56. The introduction of the capital test will require applicants who previously would have applied for a remission to submit more information with their application than under the previous system, which will be more time consuming for HMCTS staff to consider. This effect is most likely to occur in the case of applications for a remission on the basis of a receipt of benefits. However, the Government believes it is a continual benefit that remissions are targeted to those who genuinely can not afford a fee (which is assured by the requirement of evidence from users). Also, the reduction to the evidence requirement for the income test may mean that the impact is roughly neutral for other types of applications.

Non-monetised costs to society

57. None over those identified for HMCTS users have been identified.

Benefits of option 2

Transition benefits

Monetised transitional benefits to MoJ

58. No monetised transitional benefits to HMCTS have been identified.

Ongoing benefits

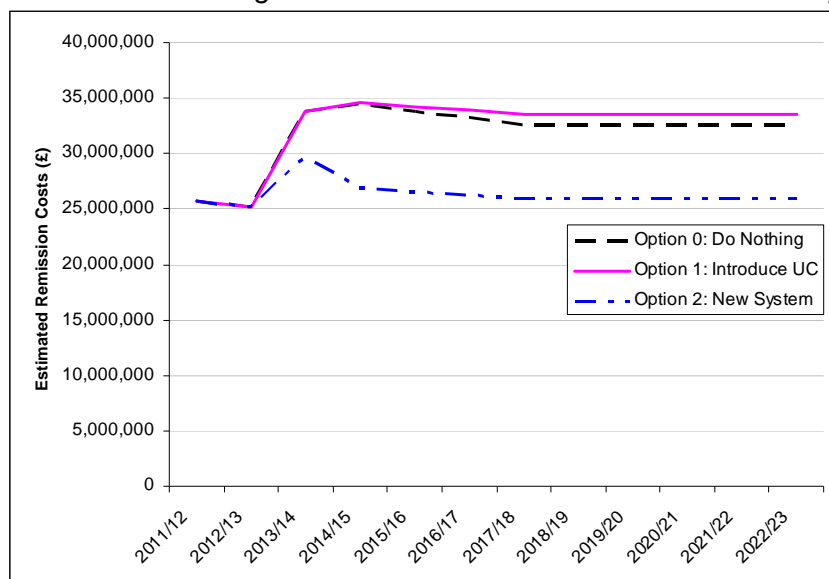
Monetised benefits to HMCTS users

59. No monetised benefits to HMCTS users have been identified.

Monetised benefits to MoJ

60. As explained under costs to HMCTS users above, Option 2 will reduce the costs of the fee remission system as eligibility for fee remissions falls. Relative to Option 0, remissions payments are likely to fall by an average of £5m a year as illustrated in Chart 3. As explained above though these savings could be lower so that if there is underreporting of capital of 46% savings would fall by around £3m a year.

Chart 3: Estimated gross cost to HMCTS of remissions under Option 2



61. In addition to savings from direct remission payments, there is a saving in administrative costs of processing the remission payments because there are fewer applicants. We estimate that this could save an average of £1m a year.

62. Combining these savings results in a 10 year NPV for the MoJ of £63m.

Non-monetised benefits to HMCTS users

63. All fee charging courts and tribunals operate a system of remissions (fee waivers) to ensure that those unable to afford fees are not denied access to their services. However, there are variations between the remission systems currently in use across courts and tribunals, meaning that users can be eligible for a fee remission in one jurisdiction but not another. Option 2 would provide a single remission system to users of all HMCTS operated courts and tribunals (with the exception of the First tier Immigration and Asylum Tribunal). Option 2 would provide a fee remission system that is consistent, more transparent and fairer for users; as their eligibility for a fee remission would be based solely on the ability of the applicant to afford the fee, rather than varying according to the nature of the court or tribunal they are accessing.

64. The capital test will also be fairer to users as remissions will be targeted at those who genuinely cannot afford the fee.

65. Simplification of the assessment and evidence requirements under the income test will also reduce the burden on users and may lead to fewer errors that require a new application to be made.

Non-monetised benefits to MoJ

66. A unified system of remissions with simpler evidence requirements will aid staff understanding and reduce training burdens for new staff and may also reduce the likelihood of staff errors. It will also offer potential for the central processing of remissions, which may in turn offer efficiencies.

Non-monetised benefits to society

67. The fee remissions system benefits society by providing access to justice for those court and tribunal users who are unable to afford part or all of their fee. By introducing an amended fee remission system that balances the need to be well-targeted and affordable, with evidence requirements that are as simple as possible, transparent, and consistent; we make it easier for users to access the fee remissions system and gain access to justice.

Net Impact

68. Much of the costs and benefits are negated in net terms as any savings to the MoJ result in greater costs to HMCTS users in the form of higher fee payments. The net impact therefore only equals the administrative savings of processing fewer remissions applications minus transitional costs. The 10 year NPC of option 1 is therefore £5m.

Risks and assumptions

69. Modelling of costs and eligibility is based on the Family Resources Survey 2010/11 (FRS). While this includes much of the information required to assess eligibility for fee remissions not all details are available. The survey's question on capital is optional and is likely to be less accurate.
70. In addition as we have limited data on the characteristics of court users we have assumed that any adult in England & Wales is equally likely to go to court. In reality certain groups are more likely than others to go to court and eligibility within these groups is likely to vary. This limits the accuracy of the analysis.
71. The modelling also assumes that the population remains unchanged from that in the FRS 2010/11. The only adjustments made to this data were to increase income in line with GDP forecasts and benefits in line with inflation.
72. As Universal Credit is not yet in place we have used provisional estimates of who will be eligible for it and take it up. In addition as we do not know the value of UC payments we have assumed they will equal payments from existing benefits it is replacing.
73. Both GDP and remissions income thresholds are assumed to increase in line with inflation.
74. Our estimates of costs also assume that remission costs mirror changes in eligibility. However in reality there could also be changes to take-up rates particularly as the number of people with qualifying passporting benefits increases and as the system becomes simpler. These could both mean that we have underestimated the cost to the MoJ for all options.
75. There could also be a significant underestimate for Option 2 due to possible underreporting of capital. We have assumed that remissions applicants state their capital to be at the actual levels as given in the FRS. However research suggests that many people with capital above the threshold may underreport their capital in order to qualify for a fee remission. Assuming 46% of people underreport their capital¹⁰, the savings would be reduced by around £3m a year.
76. We have also assumed that both the number of court cases and fees remain unchanged for the whole analysis period. In reality there are likely to be changes to both of these. However this would impact all of the options so should not have a large impact on the impact analysis.
77. As it would be very difficult to model remissions at every possible fee level we have also assumed everyone pays the same fee (the average fee remitted in 2010/11). In reality the proposals are likely to have a different impact at different fee levels. This impact is therefore not fully captured.
78. The estimates we've made for the impact of legal aid reform are also very uncertain. The key uncertainties are:
- the possibility of additional domestic violence claims being made as a result of private family cases being taken out of scope.
 - the possibility that more cases for exceptional funding will be made as a result of more cases than estimated cases being taken out of scope.

These issues would result in a reduction in the estimated number of overall legal aid cases being taken out of scope, reducing the number claiming remissions instead. However as this uncertainty will affect all of the options it shouldn't significantly affect the relative value of the options included.

Direct costs and benefits to business

79. As fee remissions are only available to individuals, there are no direct costs or benefits to business under any of the options considered.

¹⁰ Based on DWP analysis comparing the FRS 2010/11 with capital reported by applicants for income-related benefits

Wider impacts

Specific Impact Tests

Equalities Impact Test

1. Annex C sets out our analysis of the equalities impact of these proposals.

Competition Assessment

2. We do not consider this proposal to be pro or anti-competitive. There are no impacts on suppliers or providers.

Small Firms

3. Our preferred option does not impose a new requirement on small businesses.

Greenhouse Gas Assessment

4. The proposals are unlikely to have any significant impact on greenhouse gases.

Wider Environmental Impacts

5. We do not expect that the proposal will have any impact on noise pollution, landscape, wildlife, air quality or any other environmental impact.

Justice System Impacts

6. The proposal will impact HMCTS, as the proposals amend existing remissions systems in the courts and tribunals. The impacts are set out fully in the main body of this impact assessment.

Human Rights

7. We believe that our Human Rights obligations are met by this proposal. We will keep this under review in light of consultation responses.

Health Impact Assessment

8. We have identified no evidence that our policy will have a significant impact on human health by virtue of its effects on the wider determinants of health: a significant impact on any lifestyle related variables or that it will place a significant demand on any of the health and social care services.

Rural proofing

9. The proposals are not expected to have any significant rural impacts.

Sustainable Development

10. The primary impact on sustainable development is that those who use the service and can afford to pay will make a contribution towards the costs of administering their appeal, thereby reducing public spending, which could benefit the economy. Any potential impact on communities and equality groups will continue to be monitored through our initial Equality Impact Assessment and Post Implementation Review processes.

Summary and preferred option

11. The table below outlines the costs and benefits of the proposed changes:

Costs and Benefits		
Option	Costs	Benefits
2	£55m (PV over 10 years)	£65m (PV over 10 years)
	Monetised costs to HMCTS to implement new system.	Monetised benefits to Ministry of Justice due to reduced eligibility for remission. Non-monetised benefits to HMCTS, Ministry of Justice and users due to simplification and unification of remissions across most courts and tribunals
Net Benefit (PV over 10 years): £5m		

12. For the reasons set out in this document our preferred option is option 2. This option best meets our stated aim of protecting access to justice through a well-targeted system of fee remissions. This option also allows potential operational benefits presented by a single system across the civil and tribunal business and provides for the introduction of Universal Credit.

Implementation plans

13. Subject to the outcome of this consultation, changes will be implemented by way of amendment to applicable Statutory Instruments (Court and Tribunal Fees Orders) by the negative resolution procedure. We plan to implement any changes for October 2013.

Annex A: The current remission system in the civil courts

1. Her Majesty's Courts & Tribunals Service provides a fee remission system for users of the English and Wales civil and family courts. Fee remissions (waivers) are available to those who would have difficulty paying a court fee and meet the appropriate criteria. An individual may be eligible for a full remission, where no fee is payable, or a partial remission, where a contribution towards the fee is required. Anyone who seeks a remission from paying a fee either in full or in part, must apply to do so at the time of making the application or at any time when a fee is due and provide documentary proof of their financial eligibility. There are three types of remissions.
2. **Remission 1** – currently provides a full remission (i.e. no fee is payable) if the applicant is in receipt of one of the following stated benefits:
 - Income Support;
 - Income-based Jobseeker's Allowance;
 - Pension Credit guarantee credit;
 - Income-related Employment and Support Allowance; or
 - Working Tax Credit **but not also receiving** Child Tax Credit.
3. **Remission 2** – currently provides a full remission (i.e. no fee is payable) if the applicant's gross annual income (and that of their partner if they are a couple), is calculated to be not more than the amounts shown in the table below:

Gross annual income with:	Single	Couple
No children ¹¹	£13,000	£18,000
1 child	£15,930	£20,930
2 children	£18,860	£23,860

If the party paying the fee has more than 2 children then the relevant amount of gross annual income is the amount specified in the table for 2 children plus the sum of £2,930¹² for each additional child.

4. **Remission 3** – currently provides a full or partial remission (i.e. either no fee or a contribution towards the fee is payable) based on an income and expenditure means test to calculate their (and if applicable their partner's) monthly disposable income:
 - No fee payable if monthly disposable income is £50 or less;
 - If monthly disposable income is more than £50 but does not exceed £210, an amount equal to one-quarter of every £10 of the party's monthly disposable monthly income up to a maximum of £50;
 - If monthly disposable income is more than £250, an amount equal to £50 plus one-half of every £10 over £200 of the party's monthly disposable income.

¹¹ The gross annual income thresholds are derived from HM Revenue and Custom's Working Tax Credit income cut-off for workers, without children and without the 30 hour element of Tax Credit, where the rates currently are £13,022 for a single person and £17,809 for a couple – these have both been rounded to £13,000 and £18,000 respectively.

¹² The amount for each dependant child is derived from the Income Support allowance for dependent children in 2009/10 (£56.11 per week), which has been rounded to £2,930.

- There are 3 fixed allowances and 4 uncapped allowances permitted as part of the means test for this criterion:

General Living Expenses	£315 ¹³ a month
Partner	£159 ¹⁴ a month
Dependant Children	£244 ¹⁵ a month per child
Housing costs	No cap
Child maintenance	No cap
Child care expenses	No cap
Payments under a court order	No cap

5. For example, where a person's monthly disposable income is calculated between £50 and £59.99 they will contribute £12.50 on each occasion that a fee requires to be paid; where the disposable income is calculated between £340 and £349.99, the contribution will be £120. To assist users a table setting out the contributions payable has been created and is provided below:

Disposable Monthly Income	Contribution	Disposable Monthly Income	Contribution	Disposable Monthly Income	Contribution
£	£	£	£	£	£
50 – 59*	12.50	340 – 349	120.00	630 – 639	265.00
60 – 69	15.00	350 – 359	125.00	640 – 649	270.00
70 – 79	17.50	360 – 369	130.00	650 – 659	275.00
80 – 89	20.00	370 – 379	135.00	660 – 669	280.00
90 – 99	22.50	380 – 389	140.00	670 – 679	285.00
100 – 109	25.00	390 – 399	145.00	680 – 689	290.00
110 – 119	27.50	400 – 409	150.00	690 – 699	295.00
120 – 129	30.00	410 – 419	155.00	700 – 709	300.00
130 – 139	32.50	420 – 429	160.00	710 – 719	305.00
140 – 149	35.00	430 – 439	165.00	720 – 729	310.00
150 – 159	37.50	440 – 449	170.00	730 – 739	315.00
160 – 169	40.00	450 – 459	175.00	740 – 749	320.00
170 – 179	42.50	460 – 469	180.00	750 – 759	325.00
180 – 189	45.00	470 – 479	185.00	760 – 769	330.00
190 – 199	47.50	480 – 489	190.00	770 – 779	335.00
200 – 209	50.00	490 – 499	195.00	780 – 789	340.00
210 – 219	55.00	500 – 509	200.00	790 – 799	345.00
220 – 229	60.00	510 – 519	205.00	800 – 809	350.00
230 – 239	65.00	520 – 529	210.00	810 – 819	355.00
240 – 249	70.00	530 – 539	215.00	820 – 829	360.00
250 – 259	75.00	540 – 549	220.00	830 – 839	365.00
260 – 269	80.00	550 – 559	225.00	840 – 849	370.00
270 – 279	85.00	560 – 569	230.00	850 – 859	375.00
280 – 289	90.00	570 – 579	235.00	860 – 869	380.00
290 – 299	95.00	580 – 589	240.00	870 – 879	385.00
300 – 309	100.00	590 – 599	245.00	880 – 889	390.00
310 – 319	105.00	600 – 609	250.00	890 – 899	395.00
320 – 329	110.00	610 – 619	255.00	900 – 909	400.00
330 – 339	115.00	620 – 629	260.00	910 – 919**	405.00

*each range ends with .99p

¹³ The amount for general living expenses is based on the 'Monthly Disposable Income' bands which are used by the Legal Services Commission to calculate how much someone would pay towards their case when assessing Legal Aid.

¹⁴ The amount for a partner is derived from the difference between the Income Support personal allowance for a couple both 18 and over (£100.95 per week) and a single applicant over 25 (£64.30 per week) in 2009/10, which has been rounded to £159.

¹⁵ The amount for dependant children is derived from the Income Support personal allowance for dependant children in 2009/10 (£56.11 per week), which has been rounded to £244.

****the contribution will increase by £5 for every additional £10 over £919**

6. Other aspects of the Her Majesty's Courts & Tribunals Service remission system are:

- The remission system is only available to individuals; it does not apply to companies, partnerships or charities.
 - Remissions can be granted without proof of evidence in emergency situations where an undertaking is given to either provide proof of eligibility for remission or pay the full fee within 5 working days.
 - Individuals can apply for a refund (known as a retrospective remission application) if they have paid a court fee within 6 months and have evidence to prove that they would have been eligible for a remission at the time they paid the fee.
 - There is a clearly defined appeal process available to individuals who have been refused a remission but believe that they are eligible.
 - Those determined by a court to be a vexatious litigant, or bound by a civil restraint order, cannot apply for a fee remission until permission to issue has been granted (for which a fee is payable). If the application for permission is successful, the person can apply for a refund (retrospective remission), of the fee within 6 months from the date of payment.
7. In addition, there is a discretionary power for the Lord Chancellor to be able to reduce or remit a fee where owing to the exceptional circumstances of a particular case, the individual will suffer undue financial hardship.
8. Full details of the remission system, the application forms and evidence required are set out in the leaflet (EX160A) Court fees – Do I have to pay them?¹⁶

¹⁶ www.hmcourtsservice.gov.uk/courtfinder/forms/ex160a_web_1010.pdf

Annex B: Comparison of remission provisions by business area

Remission 1 – Qualifying State Benefits Test (“Passporting benefits”)

Jurisdiction	Income Support	Income based job seekers allowance	Income related Employment and Support Allowance	Pension Credit Guarantee Credit	Housing Benefit	Council Tax Benefit	Working Tax Credit
<ul style="list-style-type: none"> Civil Courts; Family Courts; Magistrates’ courts; Non-Contentious Probate ¹ UK Supreme Court; and Upper Tribunal (Lands Chamber) 	✓	✓	✓	✓			✓ provided that Child Tax Credit is <u>not</u> also received
<ul style="list-style-type: none"> Gender Recognition Panel 	✓	✓		✓			✓ provided that Child Tax Credits, or a disability or severed disability element is also received and that the Gross annual income considered is £18,948 or less
<ul style="list-style-type: none"> Gambling Appeals 	✓	✓	✓	✓			✓ provided that Child Tax Credits, or a disability or severed disability element is also received and that the Gross annual income considered is £17,474 or less
<ul style="list-style-type: none"> Residential Property Tribunal² 	✓	✓		✓	✓		✓ provided that Child Tax Credits, or a disability or severed disability element is also received and that the Gross annual income considered is £16,190 or less
<ul style="list-style-type: none"> Leasehold Valuation Tribunal³ 	✓	✓		✓	✓		✓ provided that Child Tax Credits, or a disability or severed disability element is also received and that the Gross annual income considered is £14,213 or less
<ul style="list-style-type: none"> Court of Protection ⁴ 	✓	✓	✓	✓	✓	✓	✓ provided that Child Tax Credit, or a disability or severed disability element is also received

¹ The Government has decided to introduce the remission system used by the civil courts and the probate service in the employment tribunal and employment appeal tribunal.

² From the 1st July 2013 the Property Chamber of the First-tier Tribunal will be formed; merging the Leasehold Valuations Tribunal, the Residential Property Tribunal (which both charge fees), the Agricultural Land Tribunal and the Adjudicator to HM Land Registry Tribunal (which do not currently charge fees).

³ The Leasehold Valuation Tribunal also exempts those in receipt of a certificate issued under the Funding Code and proceedings that have been transferred from a county court for determination.

⁴ The individual is not eligible for a fee remission if they are in receipt or have been awarded damages in excess of £16,000, for proceedings in the Court of Protection.

Remission 2 – Gross Annual Income Tests

Jurisdiction	Gross Annual Income Threshold
<ul style="list-style-type: none"> Civil Courts; Family Courts; Magistrates' courts; Non-Contentious Probate UK Supreme Court; and Upper Tribunal (Lands Chamber) 	Full fee remission (100% remission), if the individual's Gross Annual Income does not exceed: £13,000 (Single Person) £18,000 (Couple) For each dependant child these annual income limits increase by £2,930.
<ul style="list-style-type: none"> Gender Recognition Panel 	Full fee remission (100% remission), if the individual's relevant income does not exceed £18,948, or partial remission if the individual's relevant income is more than £18,948 but equal to or less than £28,415 (the individual would be required to pay £30).
<ul style="list-style-type: none"> Gambling Appeals 	Not Detailed in Statutory Instrument
<ul style="list-style-type: none"> Residential Property Tribunal 	Not Applicable
<ul style="list-style-type: none"> Leasehold Valuation Tribunal 	Not Applicable
<ul style="list-style-type: none"> Court of Protection 	Full fee remission (100%), if the individual's Gross Annual Income does not exceed £12,000; and Partial fee remission, if the individual's Gross Annual Income is between <ul style="list-style-type: none"> £12,001 and £13,500 (75% fee remission) £13,001 and £15,500 (50% fee remission) £15,001 and £16,500 (25% fee remission)

Remission 3 – Disposable Income Test

Jurisdiction	Gross Annual Income Threshold
<ul style="list-style-type: none"> Civil Courts; Family Courts; Magistrates' courts; Non-Contentious Probate ¹ UK Supreme Court; and Upper Tribunal (Lands Chamber) 	Test based on net monthly income and expenditure: Net Monthly income minus permitted expenditure: <ul style="list-style-type: none"> housing costs, child maintenance and care expenses, payments under court order Fixed Allowances: <ul style="list-style-type: none"> Partner: £159 Children: £244 for each dependant child General: £315 (only if claiming housing costs) A contribution is payable based the amount of the disposable income
<ul style="list-style-type: none"> Gender Recognition Panel 	Not Applicable
<ul style="list-style-type: none"> Gambling Appeals 	Not Detailed in Statutory Instrument
<ul style="list-style-type: none"> Residential Property Tribunal 	Not Applicable
<ul style="list-style-type: none"> Leasehold Valuation Tribunal 	Not Applicable
<ul style="list-style-type: none"> Court of Protection 	Not Applicable

Equality Statement

1. Having due regard to our responsibilities under the Equality Act 2010¹ we have considered the likely impacts of these proposals on individuals with protected characteristics.

Methodology

2. A population pool has been defined for the purposes of assessing whether the proposed criteria has differential impacts on different groups of individuals. Guidance from the Equality and Human Rights Commission (EHRC) states that this assessment should define the pool as being those people who may be affected by the policy (adversely or otherwise) and that the pool should not be defined too widely.
3. We have defined the population pool as the FRS population both eligible for a fee remission under the current criteria (option 0) or eligible under the proposed criteria (options 1 and 2). We have drawn on the FRS data used in the accompanying Impact Assessment (IA) to model the protected characteristics of this pool and the groups positively and negatively impacted.
4. We have explored the proportional differences in the protected characteristics of those positively and negatively impacted. Our assessment also considers the extent of that impact by protected characteristic, with reference to the potential monetary value lost or saved under the proposed criteria against a current average remitted fee of £142.
5. There is currently no comprehensive information held on the protected characteristics, income and capital of HMCTS users. We have therefore used the general population (as represented by the 2010/11 FRS) as a proxy measure for potential court and tribunal users. We acknowledge the limitations of this approach.

Analysis of option 1 (rejected option)

6. Option 1 has small positive impacts on all groups sharing protected characteristics. This option was rejected in favour of option 2 as summarised on page 18.

Analysis of option 2 (the preferred option)

7. Of all those impacted by the proposals 57% will see no cost or eligibility impacts for a fee remission. A further 13% will be positively impacted, whilst 30% will be negatively impacted by the proposals. Our modelling shows that there may be some differential impacts related to the protected characteristic of age, where those in older age groups could see a greater reduction in eligibility for a fee remission and an increase in payment towards a fee when compared to those in younger age groups. There may also be some differential impacts in relation to race, with those from a White ethnic group potentially more likely to be negatively impacted than those from a BAME group. We have modelled the impacts on both disability and sex, and consider these impacts to be marginal.

Mitigation and Justification

¹ Under section 149 of the Equality Act 2010, the Department has a legal duty to have 'due regard' to the need to: eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct under the Equality Act 2010; advance equality of opportunity between different groups (those who share a protected characteristic and those who do not); and foster good relations between different groups.

Having 'due regard' needs to be considered against the nine 'protected characteristics' under the Equality Act 2010. Due to limitations in the available data, we have been unable to model the potential impacts on sexual orientation, religion and belief, marriage and civil partnership, gender reassignment and pregnancy and maternity.

8. We do not consider that the impact of these proposals will amount to a particular or substantial disadvantage. We consider that the fee remissions system proposed will ensure that access to justice is maintained for those who are unable to afford to pay a fee.
9. In addition the Lord Chancellor's exceptional power to reduce or remit fees (or the Chief Executive in the case of the Supreme Court), would be able to reduce or remit a fee where they are satisfied that there are exceptional circumstances which justify doing so e.g. where an individual has suffered an unexpected event affecting their ability to pay a fee.
10. Therefore, we consider the proposals and any resulting impacts remain a proportionate means of achieving a legitimate aim – to ensure that those who can afford to contribute to the cost of their fee should do so, but that those who cannot pay the fee should not be prevented from accessing the court or tribunal as a result

Annex D: Treatment of income and capital

Resources of a partner

1. When assessing an applicant's eligibility for full or partial remissions, the income and capital of a partner, if any, is to be included as the income and capital of the applicant – unless the partner has a contrary interest in the proceedings in which the applicant is seeking a fee remission (e.g. divorce, gender reassignment certification, forced marriage or domestic violence).
2. "Partner" means a person with whom the applicant lives with as a couple. This includes a person with whom the applicant usually lives with as a couple but is not currently living with due to force of circumstance (e.g. where a partner is serving in the Armed Forces).

CAPITAL

Definition of capital

1. "Disposable capital" means, the value of every resource of a capital nature belonging to the applicant on the date on which the application is made unless –
 - a. it is to be treated as income.
 - b. it is to be disregarded.
2. Any sums that are paid regularly (e.g. payments under annuity) are to be treated and declared by the applicant as income.
3. Sources of disposable capital include, but are not limited to:
 - a. all capital held in all types of savings accounts, ISAs, fixed rate bonds, market linked investment bonds or savings, trust funds (where accessible), or any other fund available to the applicant;
 - b. stocks or shares;
 - c. any type of capital financial products (such as unit trusts, an OEIC's/Open-Ended Investment Company, or derivatives);
 - d. redundancy capital payments received;
 - e. Second homes;
 - f. Any jointly held capital (where one or more parties have a financial interest in a disposable capital source);
 - g. any type of capital held outside the UK.

Valuation of capital

3. Where the disposable capital is not in cash terms, its value is to be calculated at its current market value or surrender value, less—
 - a. expenses incurred in the sale, 10%; and
 - b. the amount of any debts secured on it.

e.g. an applicants second home has a current market value of £100 K Less 10% for sale expenses (£10K) and less their mortgage (£70 K) leaves a £20K capital value to be considered.

4. The market value of disposable capital possessed by the applicant in a country outside the UK is:

- a. if there is no prohibition in that country against the transfer of that capital to the UK, the market value in that country; or
 - b. if there is such a prohibition, the amount it would raise if sold in the UK to a willing buyer.
5. Where disposable capital is held in currency other than sterling, it is to be calculated after the deduction of any banking charge or commission payable in converting that capital into sterling.
 6. Where an applicant has jointly held disposable capital asset (with one or more other persons), an applicant is treated as having an equal share in those assets, in the absence of evidence to the contrary
 7. Capital held in Employee-owned business (EOB) shall be considered unless the company holds the applicants shares collectively (e.g. by an employer trust such as the John Lewis model);

Capital to be disregarded

4. Unless an applicant has any exceptional quantity or value in the items concerned, none of the following will be considered as disposable capital:
 - a. Only one property may be disregarded if:
 - i. The property is occupied by the applicant as their home, or the applicant intends to occupy it as their home;
 - ii. The property is occupied by a close relative where that person has a limited capability to work or has reached the qualifying age for state pension credit; or
 - iii. The property is occupied by a former partner of the applicant who is living apart from by force of circumstances (e.g. long term care);
 - b. Personal possessions (e.g. Household furniture, clothes, car and vehicles);
 - c. Tools and implements of trade
 - d. Capital value of the client's business in the case of the self employed;
 - e. Capital held in an Employee-owned business (EOB) where the company holds the applicant's shares collectively (e.g. by an employee trust).
 - f. Jobseeker's back to work bonus;
 - g. Community care payments;
 - h. Capital held in trust funds which the party cannot access;
 - i. Unfair dismissal capital payments received;
 - j. Compensation for a personal injury or medical negligence paid as a lump sum;
 - k. Capital held in personal or occupational pension schemes;
 - l. Capital (cash value) of insurance contracts;
 - m. Any payment made out of the Independent Living Fund (2006);
 - n. Any capital payment made out of the Bereavement Payment; and
 - o. Student Loan payments.

Deprivation of capital

5. If an applicant has deliberately deprived themselves of capital for the purpose of securing entitlement to remission or part remission of fees, the applicant is to be treated as possessing the deprived capital.
6. An applicant is not to be treated as depriving themselves of disposable capital if the party disposes of it for the purposes of—
 - a. reducing or paying a debt owed by the applicant; or
 - b. purchasing necessary goods or services if the expenditure was reasonable in the circumstances of the party's case

INCOME

Definition of income

7. “Gross monthly income” means total monthly gross income for the month preceding that which the application for remissions is made, from all sources other than receipt of any of the excluded benefits.
8. The income from a trade, profession or vocation (“self employed earnings”) is to be calculated from the person’s share of the net profits in respect of the last accounting period of such trade, profession, or vocation for which accounts have been prepared, or the drawings of the person’s concerned in respect of the period of calculation.

Excluded benefits

1. “Excluded benefits” means—
 - a. any of the following benefits payable under the Social Security Contributions and Benefits Act 1992—
 - i. attendance allowance paid under section 64;
 - ii. severe disablement allowance;
 - iii. carer’s allowance;
 - iv. disability living allowance;
 - v. constant attendance allowance paid under section 104 or paragraph 4 or 7(2) of Schedule 8 as an increase to a disablement pension;
 - vi. any payment made out of the social fund;
 - vii. housing benefit;
 - viii. widowed parents allowance
 - b. any of the following benefits payable under the Social Security Contributions and Benefits (Northern Ireland) Act 1992 –
 - i. attendance allowance paid under section 64;
 - ii. severe disablement allowance;
 - iii. carer’s allowance;
 - iv. disability living allowance;
 - v. constant attendance allowance paid under section 104 or paragraph 4(2) of Schedule 8 as an increase to a disablement pension;
 - vi. any payment made out of the social fund;
 - vii. housing benefit;
 - viii. widowed parents allowance
 - c. any of the following benefits payable under the Tax Credits Act 2002 –
 - i. any disabled child element or severely disabled child element of the child tax credit

- ii. any childcare element of child tax credit

- d. any direct payment made under the Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2003, or the Community Care, Services for Carers and Children's Services (Direct Payments) (Wales) Regulations 2004, or section 12B(1) of the Social Work (Scotland) Act 1968², or The Personal Social Services and Children's Services (Direct Payments) Regulations (Northern Ireland) 2004;

- e. a back to work bonus payable under section [26] of the Jobseekers Act 1995 or Article 28 of the Jobseekers (Northern Ireland) Order 1995;

- f. any exceptionally severe disablement allowance paid under the Personal Injuries (Civilians) Scheme 1983;

- g. any pension paid under the Naval, Military and Air Forces etc (Disablement and Death) Service Pension Order 2006;

- h. any payment made from the Independent Living Funds;

- i. any payment made from the Bereavement Allowance;

- j. any financial support paid under an agreement for the care of a foster child;

- k. any housing credit element of pension credit;

- l. armed forces independence payment; and

- m. any of the following benefits payable under the Welfare Reform Act 2012 –
 - i. maximum amount of any disabled child addition;
 - ii. maximum amount of housing costs element;
 - iii. maximum amount of child costs element;
 - iv. budgeting and short term advances;
 - v. personal independence payment.

² 1968 c. 49. Section 12B was inserted by the Community Care (Direct Payments) Act 1996 c. 30 section 4. Subsection (1) was amended by the Community Care and Health (Scotland) Act 2002 asp 5 section 7 and the Regulation of Care (Scotland) Act 2001 asp 8 section 70.

Annex E: Proposed Benefits Eligible for Passporting

An applicant will also be eligible for a 100% fee remission if they can demonstrate that they are in receipt of the following qualifying benefits:

- Income Support
- Income-based Jobseeker's Allowance
- Pension Credit guarantee credit
- Income-related Employment and Support Allowance
- Universal Credit with annual earnings of less than £6,000³

³ We have not yet determined the level at which we would "passport" Universal Credit recipients but for illustrative purposes we have used a threshold of 'Universal credit with earnings of less than £6000'. This illustrative criterion has been designed to broadly replicate the numbers that are passported via the current qualifying benefits under Universal Credit conditions.