

<b>Title:</b> Fee remissions in the First-tier Tribunal (Immigration and Asylum Chamber) <b>IA No:</b> <b>Lead department or agency:</b> Ministry of Justice <b>Other departments or agencies:</b> Her Majesty's Courts & Tribunals Service	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> February 2013		
	<b>Stage:</b> Final		
	<b>Source of intervention:</b> Domestic		
	<b>Type of measure:</b> Secondary legislation		
<b>Contact for enquiries:</b> <a href="mailto:ross.sanger@justice.gsi.gov.uk">ross.sanger@justice.gsi.gov.uk</a>			
<b>Summary: Intervention and Options</b>			<b>RPC Opinion:</b> N/A

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 One-Out?
£0.2m	NA	NA	No	NA

**What is the problem under consideration? Why is government intervention necessary?**

There are a number of exemptions from the requirement to pay an appeal fee in the Immigration and Asylum Chamber of the First-tier Tribunal, including where an appellant is in receipt of legal aid. However, legal aid in England and Wales for most immigration appeals is due to be removed in April 2013. We currently utilise the fact that legal aid solicitors establish whether or not immigration appellants meet the financial eligibility criteria for legal aid. If they do and receive legal aid then they are then exempt from paying an appeal fee. We need to consider an alternative means to establish for ourselves whether or not any of these appellants can pay the fee or should have their appeal fee reduced or remitted (if they do not first qualify for any other exemption) under the Lord Chancellor's power.

**What are the policy objectives and the intended effects?**

The Ministry of Justice's (MoJ) long-term aim is to recoup more of the costs to Her Majesty's Courts and Tribunals Service (HMCTS) of running tribunals, to reduce the subsidy currently provided by the general taxpayer and to transfer more of the cost of the service to those who use it. In order to ensure that those who are less well off can continue to access the Tribunal, it is necessary to ensure that those assessed as unable to afford the immigration appeal fees can have their fee remitted. This is to ensure that access to justice is preserved for the poorest appellants and that any rights under the European Convention on Human Rights are enforceable through the appellate system.

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

- Option 0 – (Base Case) Do nothing. Do not replace the legal aid fee exemption that will no longer apply in immigration cases when LASPO Act 2012 comes into force and maintain other current exemptions and remissions.
- Option 1 – (Preferred option) Do not replace the legal aid fee exemption that will no longer apply in immigration cases when LASPO Act 2012 comes into force and maintain other current exemptions and remissions. Introduce policy relying on UKBA criteria for individuals making visa applications to show they can financially support themselves without recourse to public funds. If an appellant claims they can support themselves, but claim they cannot pay the appeal fee, we would consider and use the Lord Chancellor's power to reduce or remit the fee in exceptional circumstances.
- Option 2 – (Rejected Option) Adopt HMCTS's current court fee remissions system for those making immigration appeals.

**Will the policy be reviewed?** It will be reviewed. If applicable, set review date: **September 2015**

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.	<b>Micro No</b>	<b>&lt; 20 No</b>	<b>Small No</b>	<b>Medium No</b>	<b>Large No</b>
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b>		<b>Non-traded:</b>

*I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.*

Signed by the responsible SELECT SIGNATORY: \_\_\_\_\_ Date: \_\_\_\_\_

# Summary: Analysis & Evidence

# Policy Option 1

Description: Do not replace the legal aid fee exemption that will no longer apply in immigration cases when LASPO Act 2012 comes into force and maintain other current exemptions and remissions. Introduce policy relying on UKBA criteria for individuals making visa applications to show they can financially support themselves without recourse to public funds. If an appellant claims they can support themselves, but claim they cannot pay the appeal fee, we would consider and use the Lord Chancellor's power to reduce or remit the fee in exceptional circumstances.

## FULL ECONOMIC ASSESSMENT

Price Base Year 12/13	PV Base Year 13/14	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	High: 0.4	Best Estimate: 0.2

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	0	0
High	0	0.1	1.2
Best Estimate	Negligible	0.1	0.6

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

In the base case, appellants whom no longer receive legal aid could request a remission under 'exceptional circumstances.' Option 1 Low scenario: all who would have been exempt under legal aid provision successfully apply for the Lord Chancellor's 'exceptional circumstances' criteria after going through the UKBA maintenance and accommodation tests. There would be no impact against the base case. Option 1 High scenario: assumes none of those previously exempt request a Lord Chancellor's power remission after going through the UKBA maintenance and accommodation test. This costs appellants £0.2m per annum in fees, but saves £0.1m per annum in HMCTS processing costs, resulting in a net cost of £0.1.

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

- Potential judicial review costs.
- Costs to HMCTS of staff familiarising themselves with changes, updating the website and issued guidance as well as administering fee receipt. This is expected to be minimal.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	0	0
High	0	0.2	1.6
Best Estimate	0	0.1	0.8

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

Low scenario: There would be no impact against the base case. High scenario: HMCTS benefit by receiving fee income of £0.2m per annum in fee income.

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

- Any increase in Family Visit Visa income in 2013/14 as a result of the policy.

### Key assumptions/sensitivities/risks

Discount rate (%) 3.50%

The processing cost of an 'exceptional circumstances' remission request using the Lord Chancellor's power to reduce or remit the fee is estimated to be the same cost as processing an HMCTS remission request of £32. However, this may be slightly higher, owing to the additional time and resource required to consider an 'exceptional circumstances' remissions request. It is estimated that no more than the same amount of appellants whom previously received legal aid would choose to apply for an 'exceptional circumstances' remission request'. It is assumed that full rights of appeal for all Family Visitors will stop in 2014 (as planned if the Crime and Courts Bill receives Royal Assent). It is assumed under the base case that all those who were exempt under legal aid are now remitted through the Lord Chancellor's 'exceptional circumstances' criteria.

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:				In scope of OIOO?	Measure qualifies as
Costs:	N/Q	Benefits:	N/Q		
				No	NA

# Summary: Analysis & Evidence

# Policy Option 2

**Description:** Adopt HMCTS's current court fee remissions system for those making immigration appeals.

## FULL ECONOMIC ASSESSMENT

Price Base Year 12/13	PV Base Year 13/14	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -5	High: -6	Best Estimate: -5.5

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	3	26
High	0	4	33
Best Estimate	Negligible	3.5	29.5

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

The low scenario assumes that 50% of out-of-country appellants (Entry Clearance Officer and Family Visit Visas) apply and successfully receive a remission and 35% of in-country appellants (Managed Migration) would receive a remission. This costs HMCTS £2m per annum in foregone income and £0.6m per annum in processing costs. The high scenario assumes that 75% of out-of-country appellants (Entry Clearance Officer and Family Visit Visas) apply and successfully receive a remission and 35% of in-country appellants (Managed Migration) would receive a remission. This costs HMCTS £3m per annum in foregone income and £0.7m per annum in processing costs.

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

- Potential judicial review costs.
- Costs to HMCTS of staff familiarising themselves with changes, updating the website and issued guidance as well as administering fee receipt. This is expected to be minimal.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	2	26
High	0	3	24
Best Estimate	0	2.5	25

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

Under the low scenario appellants benefit from remissions worth £2.2 m per annum. Under the high scenario appellants benefit from remissions worth £2.8m per annum.

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

- HMCTS would demonstrate a consistent approach as the application criteria for remissions would be the same.

<b>Key assumptions/sensitivities/risks</b>	<b>Discount rate (%)</b>	3.50%
<p>Out-of-country applicants could only qualify for a remission based on Remission 2 criteria of gross annual income and Remission 3 criteria of net monthly income. It is difficult to quantify how many of these appellants would qualify for these remissions. However, the majority of the appellants originate from countries where the gross national income per capita is below the gross annual income threshold in the Remission 2 criteria. Therefore, we have assumed a low scenario where 50% apply and successfully receive a remission and a high scenario where 75% of out-of-country appellants apply and successfully receive a remission. We have assumed 35% of in-country appellants will apply and successfully receive a remission based on Analytical Services modelling which says that circa 35% of UK population would be in receipt of a full remission through remission 1 and 2 criteria. It is assumed that full rights of appeal for all Family Visit Visas will stop in 2014 (as planned if the Crime and Courts Bill receives Royal Assent).</p>		

## BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: N/Q	Benefits: N/Q	Net: N/Q	No	NA

## Evidence Base (for summary sheets)

### Annual profile of monetised costs and benefits\* - 2013/14 (nearest £1m)

Option 1	Y <sub>1</sub> 2013/14	Y <sub>2</sub> 2014/15	Y <sub>3</sub> 2015/16	Y <sub>4</sub> 2016/17	Y <sub>5</sub> 2017/18	Y <sub>6</sub> 2018/19	Y <sub>7</sub> 2019/20	Y <sub>8</sub> 2020/21	Y <sub>9</sub> 2021/22	Y <sub>10</sub> 2022/23
Transition costs	0	0	0	0	0	0	0	0	0	0
Annual recurring cost	0	0	0	0	0	0	0	0	0	0
Total annual costs	0	0	0	0	0	0	0	0	0	0
Transition benefits	0	0	0	0	0	0	0	0	0	0
Annual recurring benefits	0	0	0	0	0	0	0	0	0	0
Total annual benefits	0	0	0	0	0	0	0	0	0	0

Option 2	Y <sub>1</sub> 2013/14	Y <sub>2</sub> 2014/15	Y <sub>3</sub> 2015/16	Y <sub>4</sub> 2016/17	Y <sub>5</sub> 2017/18	Y <sub>6</sub> 2018/19	Y <sub>7</sub> 2019/20	Y <sub>8</sub> 2020/21	Y <sub>9</sub> 2021/22	Y <sub>10</sub> 2022/23
Transition costs	0	0	0	0	0	0	0	0	0	0
Annual recurring cost	7	3	3	3	3	3	3	3	3	3
Total annual costs	7	3	3	3	3	3	3	3	3	3
Transition benefits	0	0	0	0	0	0	0	0	0	0
Annual recurring benefits	6	3	3	3	3	3	3	3	3	3
Total annual benefits	6	3	3	3	3	3	3	3	3	3

\* For non-monetised benefits please see summary pages and main evidence base section. Above costs are midpoint figures. High and low figures are explained in the following pages.

### Background

1. The Immigration and Asylum Chamber of the First-tier Tribunal deals with appeals against decisions made by the Home Secretary and officials on immigration, asylum and nationality matters. The most common types of appeal are made against decisions to refuse a person asylum in the UK; refuse a person entry to, or leave to remain in, the UK; and to deport someone already in the UK.
2. Fee charges for immigration and asylum appeals to be heard in the Immigration and Asylum Chamber of the First-tier Tribunal were introduced on 19<sup>th</sup> December 2011. Prior to this date, there was no charge for these appeals - the costs were largely funded by the taxpayer and partly by UKBA visa application fees. Fees were introduced to reduce the cost to the taxpayer and because it was felt that those who use the appeals system,

and can afford to pay, should pay a fee as a contribution towards the costs of their appeal.

3. Following the consultation response to establish appeal fees in the Immigration and Asylum Chamber<sup>1</sup>, the First-tier Tribunal (Immigration and Asylum Chamber) Fees Order 2011<sup>2</sup> ('the Fees Order') imposed a fee for each person appealing of £80 for a paper determination and £140 for an oral hearing. The fee for a paper based appeal is set lower than an oral hearing as a paper determination requires less administrative and judicial resources to process. The fees are not set higher than the 25% cost recovery level proposed in the original consultation paper, and therefore a taxpayer subsidy remains.
4. Not all types of appeals attract an appeal fee. Under the Fees Order no fee is payable if the appellants' appeal is against one of the following decision types:
  - section 2A of the 1971 Act(1) (deprivation of right of abode);
  - section 5(1) of the 1971 Act (a decision to make a deportation order);
  - paragraphs 8, 9,10, 10A or 12(2) of Schedule 2 to the 1971 Act(1) (a decision that an illegal entrant, any family or seaman and aircrew is or are to be removed from the United Kingdom by way of directions);
  - section 40 of the British Nationality Act 1981(1) (deprivation of citizenship);
  - section 10(1) of the 1999 Act(1) (removal of certain persons unlawfully in the United Kingdom);
  - section 76 of the 2002 Act (revocation of indefinite leave to enter or remain in the United Kingdom);
  - section 47 of the Immigration, Asylum and Nationality Act 2006(1) (removal: persons with statutorily extended leave);
  - regulation 19(3) of the Immigration (European Economic Area) Regulations 2006(1) (a decision to remove an EEA national or the family member of such a national);
  - An appeal in the Detained Fast Track Process;
  - If an appellant is provided with Asylum Support Funding by the United Kingdom Border Agency under sections 95 or 98 under the Immigration and Asylum Act 1999;
  - If an appellant whose benefit services are provided by a local authority under section 17 of the Children Act 1989(1); and
  - If an appellant is in receipt of Legal Aid.
5. In addition, appellants may apply for a remission under the Lord Chancellor's discretionary power to remit or reduce the fee if due to 'exceptional circumstances' they are unable to pay the appeal fee.
6. These fee remissions and exemptions ensure access to the tribunal is not prevented by those that cannot pay the appeal fee, and that any rights under the European Convention on Human Rights are enforceable through the appellate system. For instance, an individual's right to respect for a private and family life under Article 8 and the right to marry under Article 12 have to be able to be determined and enforceable through the tribunal/courts system
7. In 2011-2012 the total tribunal costs (excluding apportioned overheads) were £92.7m. Fee income (since fees were introduced in quarter 4) was £1.35m with remissions

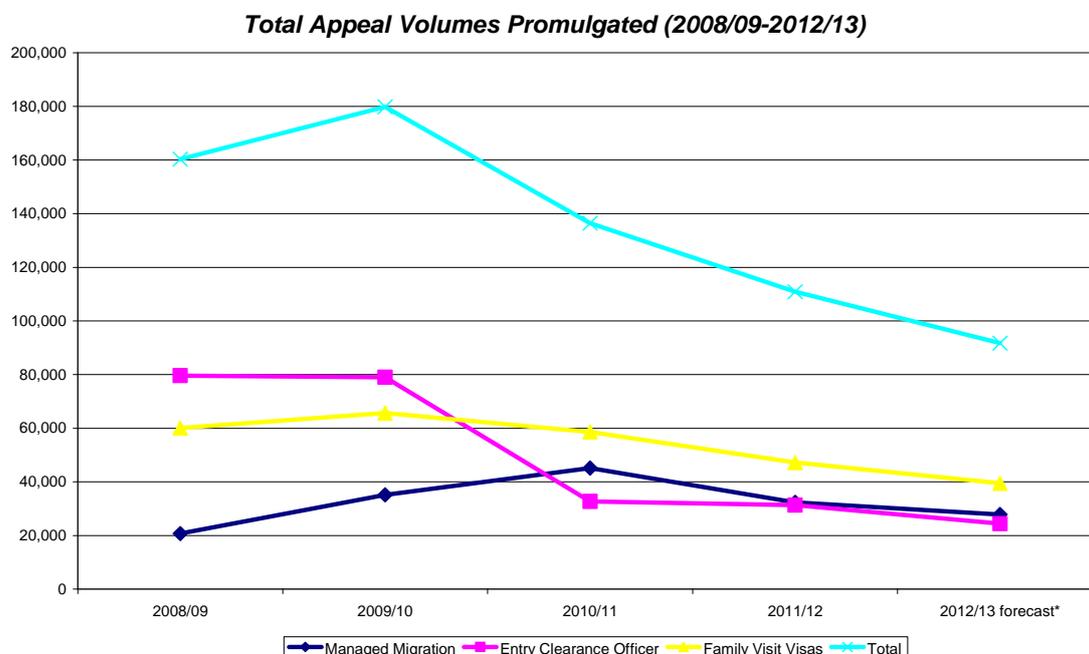
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<sup>1</sup> [webarchive.nationalarchives.gov.uk/20111121205348/http://www.justice.gov.uk/consultations/consultations-CP10-10.htm](http://webarchive.nationalarchives.gov.uk/20111121205348/http://www.justice.gov.uk/consultations/consultations-CP10-10.htm)

<sup>2</sup> SI 2011/2841

costing £131,000. UKBA contributed £14m (through a proportion of the visa application fee relating to the appeal process). This meant that there was a gross deficit of £77.2m for the Immigration and Asylum Chamber, which is subsidised by the taxpayer.

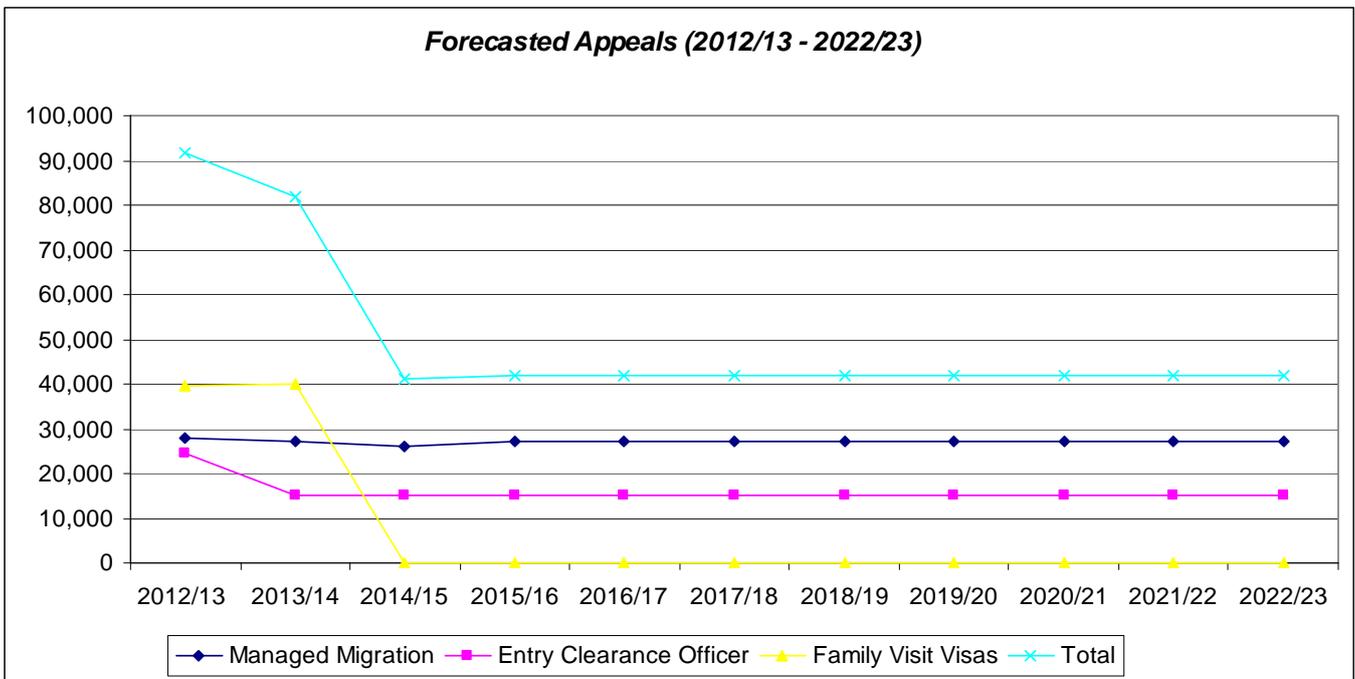
- The chart below sets out the number of all (non-asylum) immigration (Managed Migration, Entry Clearance Officer and Family Visit Visa) appeals promulgated (decided) by the Tribunal year on year from April 2008 to March 2012. It shows that there has been a decline in the number of appeals over this timeframe.



Source: HMCTS Management Information

- UKBA forecasts indicate that volumes will continue to drop in 2013/14, but from that point onwards are likely to stay the same. This is shown in the chart below. The key driver behind the drop in 2013/14 is the removal of FVV appeals<sup>3</sup> which is anticipated to happen if the Crime and Courts Bill receives royal assent.

<sup>3</sup> The Crime and Courts Bill, announced on 11 May 2012, will, subject to parliamentary approval, remove the full right of appeal against all family visit visa refusals. If it goes ahead as anticipated, then it is expected to come into force by 2014.



Source: HMCTS Management Information

### Rationale for Intervention

10. When the relevant provisions of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), come into force in April 2013, a number of changes will be made to the scope of legal aid in England and Wales<sup>4</sup>. This includes the removal of legal aid provision for most immigration appeals (e.g. refusal decisions under appeal categories for managed migration, entry clearance officer and family visit visas) from April 2013.
11. This means that the range of appellants who can benefit from an exemption for being entitled to legal aid will reduce. If any of the appellants in these appeal categories do not qualify for any other exemption (or have the fee paid by a third party e.g. a family member on their behalf) then they would be able to apply for a remission under the Lord Chancellor's power to reduce or remit the fee if it is considered that, due to exceptional circumstances, they are unable to pay the appeal fee.
12. We currently utilise the fact that legal aid solicitors establish whether or not appellants meet the financial eligibility criteria for legal aid<sup>5</sup>. If they do and receive legal aid they are then exempt from paying an appeal fee. The removal of legal aid provision for most Managed Migration, Entry Clearance Officer and Family Visit Visa immigration appeals from April 2013 will mean that appellants in those appeal categories will no longer be able to request exemption from paying an appeal fee on the basis that they are in receipt of legal aid. In these cases, appellants would need to pay the appeal fee (themselves or paid by a third party e.g. family on their behalf) if they wish to use the Tribunal to determine their appeal, unless they either:

- a) qualify for any other exemption listed in paragraph 4 :or

<sup>4</sup> Further detail about Legal Aid entitlement can be found at [www.legalservices.gov.uk](http://www.legalservices.gov.uk) for England and Wales , [www.slab.org.uk](http://www.slab.org.uk) in Scotland and for Northern Ireland [www.nils.org.uk](http://www.nils.org.uk).

<sup>5</sup> For immigration cases the appellant needs to show the legal advisor that they cannot pay the legal costs. The legal advisor undertakes a means test to assess whether or not the appellant is eligible for legal aid. If the legal advisor considers that the appellant is eligible then the legal advisor applies for legal aid on behalf of the appellant. For details see [www.legalservices.gov.uk/civil/civil\\_legal\\_aid\\_eligibility.asp](http://www.legalservices.gov.uk/civil/civil_legal_aid_eligibility.asp)

b) do not qualify for another exemption, but apply for a remission under the Lord Chancellor's power to reduce or remit the fee, and it is considered that there are exceptional circumstances which justify doing so.

13. We need to consider an alternative means to establish for ourselves if these affected appellants should pay a fee or should be remitted to enable the poorest appellants to access the Tribunal and to exercise their rights under the European Convention on Human Rights through the appellate system. For instance, an individual's right to respect for a private and family life under Article 8 and the right to marry under Article 12 have to be able to be determined and enforceable through the tribunal/courts system. We have therefore considered how this can be achieved.

14. This impact assessment is focused on the appeal categories where legal aid provision and fee exemption has been available but will no longer be from April 2013. These are; Managed Migration, Entry Clearance Officer and Family Visit Visa appeal categories. Since appeal fees were introduced on 19<sup>th</sup> December 2011 to 30<sup>th</sup> June 2012<sup>6</sup> a total of 1,231 appellants in these appeal categories were in receipt of legal aid and were exempt from paying the appeal fee. This is broken down as follows:

- Managed Migration – 387 legal aid exemptions
- Entry Clearance Officer – 744 legal aid exemptions
- Family Visit Visa – 100 legal aid exemptions

15. This compares to an overall total of 1,264 remissions for Managed Migration (401), Entry Clearance Officer (758) and Family Visit Visa (105) appeals. Thus the changes to legal aid exemptions affect 97% of the appellants who currently receive remissions through receipt of legal aid and success under Lord Chancellor's power.

16. Based on these figures, we estimate that in 2012-2013, approximately 2,500 of these types of immigration appellants will receive an immigration appeal fee remission. This is less than 3% of the total number of appeals we estimate will be made to the tribunal in 2012-2013.

## **Policy Objectives**

17. The Government's policy is that tribunal users should contribute to the cost of the resource they consume, but that provision should be made to ensure that those who are unable to afford a fee are still able to access the Tribunal.

18. In line with Government policy, our main objectives are to:

- Identify an alternative means to establish whether or not immigration appellants can pay the fee or should have their appeal fee remitted;
- Retain all other current exemptions and the Lord Chancellor's power to reduce or remit fees;
- Maintain a different fee remission system for immigration appeals (than the wider Her Majesty's Courts and Tribunals Service's (HMCTS) court fee remission system), that does not unfairly discriminate between in-country and out-of-country appellants;
- Aim to ensure that the poorest appellants are able to access the Tribunal if they are unable to pay the fee (or have the fee paid by a third party e.g. a family member).

## **Scope of Impact Assessment**

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<sup>6</sup> Figures are correct as of 10<sup>th</sup> September, when the HMCTS management information report was generated

19. The proposals in this impact assessment (IA) have been developed to only address the areas of the remission system directly affected by the removal of immigration legal aid in England and Wales from April 2013. All other current exemptions and remissions will remain for immigration appeals and are therefore out of scope of this IA.

### In Scope

20. The proposals cover the following key appeal categories:

- **Family Visit Visa (FVV).** Appeals against decisions not to allow temporary visits to the UK;
- **Managed Migration – Settlement.** Appeals by people who are already in the UK and seeking to stay permanently;
- **Managed Migration – Non Settlement.** Appeals by people who are already in the UK and seeking to stay longer than they are already allowed to;
- **Entry Clearance Officer (ECO) – Non settlement.** All non-FVV overseas, non-settlement entry clearance applications do not now attract a full right of appeal. They are dealt with by the points based system and appeals can only be brought on residual grounds (that is, on specific Human Rights or Racial Discrimination grounds);
- **Entry Clearance Officer (ECO) – Settlement.** These appeals are most commonly against the refusal of a settlement application for a person to reside permanently in the UK; and
- **European Nationals** - Applications from European Economic Area (EEA) nationals and Switzerland and their family members for documentation to demonstrate their right of residence, for an EEA family permit, or under transitional work schemes for workers from EU Accession states.<sup>7</sup>

### Out of Scope

#### *Asylum Appeals*

21. While our policy is that users who can afford to pay should make a contribution towards the Tribunal's cost of administering their appeals, we recognise that those making asylum and humanitarian protection appeals face different circumstances to those making immigration appeals. Under our proposals, as those claiming asylum will remain eligible for legal aid, the existing remissions policy remains unchanged, therefore this type of appeal is not in scope.

#### *Non-Asylum Appeals*

22. As legal aid will continue to be available for some non-asylum immigration cases including immigration detention cases, Special Immigration Appeals Commission proceedings and certain immigration applications for leave to enter or remain in the UK by victims of human trafficking or by victims of domestic violence, these type of appeals are not in scope.

#### *Exemption based on action initiated by the State*

23. An appeal that is being made against actions by the State with regard to the following does not fall within the scope of these proposals:

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<sup>7</sup> [www.ukba.homeoffice.gov.uk/eucitizens/](http://www.ukba.homeoffice.gov.uk/eucitizens/)

- Section 5(1) of the Immigration Act 1971 – a decision to make a deportation order;
- Section 76 of the Nationality, Immigration and Asylum Act 2002 – revocation of indefinite leave to enter or remain in the UK;
- Section 2A of the Immigration Act 1971 – deprivation of right of abode;
- Section 40 of the British Nationality Act 1981 – deprivation of citizenship;
- Regulation 19(3)(b) of the Immigration (European Economic Area) Regulations 2006 – a decision to remove an EEA national or the family member of such a national;
- Paragraphs 8,9,10,10A or 12(2) of Schedule 2 to the 1971 Act - a decision that an illegal entrant, any family or seaman and aircrew is or are to be removed from the United Kingdom by way of directions;
- Section 10(1) of the Immigration and Asylum Act 1999 – removal of certain persons unlawfully in the United Kingdom; and
- Section 47 of the Immigration, Asylum and Nationality Act 2006 – removal of persons with statutorily extended leave.

### *Other exemptions*

24. An appeal fee is also not required for the following, and therefore is out of scope for the new remissions system:

- Appellants in receipt of Asylum Support Funding under sections 95 and 98 of the Immigration and Asylum Act 1999;
- Asylum appellants who are detained under the UK Border Agency's Detention Fast Track process will not pay a user fee;<sup>8</sup>
- Where the appellant is in receipt of legal aid.<sup>9</sup> Appellants will be exempt and no fee will be payable by the appellant on proof that they are in receipt of Legal Aid;
- A fee is not payable where the appellant is under 18 years old and is provided with services by a local authority under Section 17 of the Children Act 1989; and
- A fee is not payable with regard to any Convention into which the UK had entered that provides that no fee is required to be paid in respect of any proceedings.

25. A discretionary power for the Lord Chancellor to be able to reduce or remit a fee in exceptional circumstances that justify doing so is available under article 7 of the First-tier Tribunal (Immigration and Asylum Chamber) Fees Order 2011.

### *Appeals to the Upper Tribunal*

26. A separate fee is not charged for applications for permission to appeal to the Immigration and Asylum Chamber of the Upper Tribunal and any subsequent hearing, at present; therefore this is out of scope of the proposals.

### **One-in-One-out Methodology**

27. As this proposal involves creating an alternative remission system for immigration appeal fees, 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.

<sup>8</sup> The Fast Track Process is explained here:

[www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/detention/](http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/detention/)

<sup>9</sup> Further detail about Legal Aid entitlement can be found at [www.legalservices.gov.uk](http://www.legalservices.gov.uk) for England and Wales, [www.slab.org.uk](http://www.slab.org.uk) in Scotland and for Northern Ireland [www.nilsc.org.uk](http://www.nilsc.org.uk).

## **Description of options considered (including do nothing)**

28. Option 0 – (Base Case) Do nothing. Do not replace the legal aid fee exemption that will no longer apply in immigration cases when LASPO Act 2012 comes into force and maintain other current exemptions and remissions.
29. Option 1 – (Preferred option) Do not replace the legal aid fee exemption that will no longer apply in immigration cases when LASPO Act 2012 comes into force and maintain other current exemptions and remissions. Introduce policy relying on UKBA criteria for individuals making visa applications to show they can financially support themselves without recourse to public funds. If an appellant claims they can support themselves, but claim they cannot pay the appeal fee, we would consider and use the Lord Chancellor's power to reduce or remit the fee in exceptional circumstances.
30. Option 2 – (Rejected Option) Adopt HMCTS's current court fee remissions system for those making immigration appeals.
31. The Government's preferred option is option 1. We welcome views on these proposals during the consultation period.

## **Main Affected Groups**

32. The following groups are likely to be affected by the proposals:

- Appellants making an immigration appeal at the First-tier Tribunal;
- HMCTS – administers the First-tier Tribunal and manages remission requests;
- UKBA – front line staff decide whether to allow permission to enter the UK or refuse entry or leave to remain;
- Business, Universities, Charities and Non-Profit Organisations - organisations that choose to financially assist appellants who do not qualify for legal aid with their appeals and meet the appeal costs;
- Taxpayers – the subsidy currently provided by the UK Exchequer towards the running and operating costs of HMCTS; and
- Legal services professionals.

## **Cost Benefit Analysis**

**Base Case / Option 0 - Do nothing. Do not replace the legal aid fee exemption that will no longer apply in immigration cases when LASPO Act 2012 comes into force and maintain other current exemptions and remissions.**

### *Description*

33. The 'do nothing' option will not replace the part of the current fee remission system for the First-tier Tribunal (Immigration and Asylum Chamber) that will be affected by the removal of legal aid in England and Wales for some immigration appeals following the commencement of the relevant provisions of LASPO in April 2013.
34. The other elements that make up the remission system will continue such as:
- Exemption for Asylum Support funding;
  - Exemption for appellants where action initiated by the state has resulted in their need to appeal;

- Exemption where appellants are in receipt of legal aid (i.e. Asylum but not Managed Migration, Entry Clearance Officer and Family Visit Visa appeals);
- Exemption where appellants are in the Detained Fast Track process;
- Exemption for an appellant that is under 18 years old and is provided with services by a local authority under Section 17 of the Children Act 1989;
- Exemption with regard to any Convention into which the UK had entered that provides that no fee is required to be paid in respect of any proceedings; and
- The Lord Chancellor's power to reduce or remit the payment of an appeal fee in 'exceptional circumstances' that justify doing so.

35. Appellants who will no longer receive legal aid will no longer be exempt from paying a fee (i.e. those appealing a Managed Migration, Entry Clearance Officer and Family Visit Visa immigration decision). From April 2013, if these immigration appellants want to make an appeal against an immigration decision, but cannot pay the fee (and they are not supported e.g. by a family member who can pay the fee) will need to first check if their appeal qualifies for one of the other fee exemptions. If it does, then no fee will be charged. If it doesn't then the appellant can apply for a remission under the Lord Chancellor's power to remit the fee if it is considered there are 'exceptional circumstances' why they cannot pay the appeal fee. Appellants would need to write to the Tribunal, specifying the 'exceptional circumstances' which would justify the Lord Chancellor in exercising his discretion in their favour (i.e. why they are unable to pay the fee). They would be required to provide appropriate supporting evidence. Their application would be considered by an administrative manager within the Tribunal. If this is unsuccessful then they would need to pay the fee if they still wish to make an appeal.

36. For modelling purposes, we assume that all of those who were exempt from paying a fee now *successfully* apply for a remission for 'exceptional circumstances' under Lord Chancellor's power, although we are unable to quantify in absolute certainty if all these appellants would in fact choose to go through this route. We are also unable to quantify exactly how many would be approved for a remission under the Lord Chancellor's power to remit a fee in 'exceptional circumstances' as this is not identical to the previous legal aid exemption route. However, as no further information is available that may lead us to conclude that less people would be approved under the 'exceptional circumstances' route, we have assumed 100% are successful.

37. To quantify the impacts of the proposed baseline, the following assumptions have been made:

- Based on the split of receipts between oral and paper hearings from April to June 2012, there is a 81/19 oral/paper split in ECO, a 82/18 oral/paper split in Managed Migration, and a 64/36 oral/paper split in FVV cases;
- That the fee for an oral hearing will be £140 and £80 for a paper hearing in 2012/13 prices for every year of the 10 year appraisal, assuming fees will be uplifted for inflation;
- From 2013/14 onwards, there are no more FVV appeals heard in the Tribunal; and
- We assume that the percentage of applicants affected by the removal of legal aid is and will be the same as the percentages of those remitted currently via the legal aid criteria.

<b>% of Fee remissions (based on% actually remitted in the period 19 December 2011 30 June 2012). This is used primarily for option 1]</b>	Managed Migration (MM)	2.00%
	Entry Clearance Officer (ECO)	6.00%
	Family Visit Visas (FVV)	0.40%
	<b>Total</b>	<b>2.40%</b>

Source: HMCTS Management Information

## HMCTS Costs

38. As all those who would have been exempt from paying a fee now successfully apply for a remission under the Lord Chancellor's 'exceptional circumstances', HMCTS foregoes around £200k of income per annum from appellants that are not required to pay the fee.
39. This is calculated by first estimating the volumes of appellants who would have received a remission (e.g. for Managed Migration (MM), 2% multiplied by projected volumes of 27,000 per annum to give circa 540); then dividing those numbers using the oral/paper split (e.g. for MM 82% of the 540 – 440 – get an oral hearing, and 18% of the 540 – 100 – get a paper hearing); then multiplying each appeal type volume by the appropriate fee (e.g. for MM, 460 multiplied by £140 and 100 multiplied by £80); and, finally sum those to get foregone income (e.g. for MM, circa £70k).
40. There is an administrative cost to process an 'exceptional circumstance' request under the Lord Chancellor's power. We have assumed that the processing cost of an 'exceptional circumstances' remission request using the Lord Chancellor's power to remit the fee is the same as the cost of processing other remission requests (£32). However, we acknowledge that this may be slightly higher, owing to the additional time and resource required to consider, but we are unable to quantify the cost.
41. If all those who were exempt from paying a fee now successfully apply for a remission under the Lord Chancellor's 'exceptional circumstances', HMCTS will incur processing costs of around £50k per annum.

## HMCTS Benefits

42. The benefits to HMCTS in the base case are set to £0 as all appellants receive a remission.

## Benefits to Appellants

43. Appellants benefit as they receive full remissions under the base case. The precise figure is equivalent to the income foregone by HMCTS (£200K).
44. This option may result in additional costs to the department through any potential judicial review costs. These costs have not been quantified.
45. It would be resource neutral for other appeals in categories asylum, deportation, human rights etc. as appellants would still be eligible for a remission under legal aid or would

**Option 1 (Preferred option) – Do not replace the legal aid fee exemption that will no longer apply in immigration cases when LASPO Act 2012 comes into force and maintain other current exemptions and remissions. Introduce policy relying on UKBA criteria for individuals making visa applications to show they can financially support themselves without recourse to public funds. If an appellant claims they can support themselves, but claim they cannot pay the appeal fee, we would consider and use the Lord Chancellor’s power to reduce or remit the fee in exceptional circumstances.**

*Description*

46. Like option 0, this option retains the elements of the existing remission system that will not change when LASPO Act 2012 comes into force such as:

- Exemption for Asylum Support funding;
- Exemption for appellants where action initiated by the state has resulted in their need to appeal;
- Exemption where appellants are in receipt of legal aid (i.e. Asylum but not Managed Migration, Entry Clearance Officer and Family Visit Visa appeals);
- Exemption where appellants are in the Detained Fast Track process;
- Exemption for an appellant that is under 18 years old and is provided with services by a local authority under Section 17 of the Children Act 1989;
- Exemption with regard to any Convention into which the UK had entered that provides that no fee is required to be paid in respect of any proceedings; and
- The Lord Chancellor’s power to reduce or remit the fee in ‘exceptional circumstances’ that justify doing so.

47. However, this option differs from option 0 because it includes an assumption to enable HMCTS to establish whether or not these immigration appellants are likely to be able to pay the fee or should have their appeal fee remitted (because they will no longer be exempt from paying the fee and claim they cannot pay the fee), so they will be able to use the Tribunal to determine their appeal.

48. We believe that the simplest way of doing this, both for the immigration appellants themselves and for us to administer, is to utilise the fact that the UK Border Agency (UKBA) undertakes financial checks on the vast majority of entry routes and applications for leave to enter or remain which carry a right of appeal. If an individual claims they can, in accordance with requirements under the Immigration Rules, maintain and support themselves (or are maintained and supported by a third party) without recourse to public funds, then it does not seem unreasonable to assume they should be able to pay the appeal fee of £80 for a paper determination or £140 for an oral hearing. Nevertheless, that assumption could be wrong. If an appellant claims they can maintain and support themselves (or that a third party can maintain and support them), but claim they cannot pay the appeal fee (or that the third party cannot pay the fee), we would consider that application and, if they could not pay the fee, use the Lord Chancellor’s power to reduce or remit the fee in exceptional circumstances. In this situation, these appellants would need to write to the Tribunal, specifying the reasons why their ‘exceptional circumstances’ prevent them from paying their appeal fee and include appropriate supporting evidence. Their applications would be considered by an administrative manager within the Tribunal.

49. Further, we propose to use the Lord Chancellor's exceptional powers for applications which are received from appellants that are not subject to UKBA's maintenance and accommodation test. This applies to European Economic Area nationals and Switzerland and their family members. The European Economic Area (EEA) consists of Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, the Republic of Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the UK. Although Iceland, Liechtenstein and Norway are not members of the European Union (EU), their citizens have the same rights as EU citizens to enter, live in and work in the UK.
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50. If an appellant from this group does not qualify for any other exemption, then any claim to be unable to afford the fee from this group would be dealt with by making an application for the Lord Chancellor to exercise his discretion to reduce or remit the fee. These appellants would need to write to the Tribunal, specifying the 'exceptional circumstances' which would justify the Lord Chancellor in exercising his discretion in their favour. They would be required to provide appropriate supporting evidence. Their applications would be considered by an administrative manager within the Tribunal.
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51. Management figures from UKBA show that approximately 4,000 EEA type appeals a year are generated from immigration cases where there is no requirement for the applicant to prove that they will be maintained and accommodated in the UK without recourse to public funds.
52. We are unable to break down how many of these appellants pay a fee or are eligible for an exemption or could have their fee remitted or reduced and would have been counted amongst the 2,500 appellants likely to be affected by the removal of legal aid provision. So, for modelling purposes, we have not explicitly accounted for those appellants that may not pass the UKBA maintenance and accommodation test, as the amount of appellants who will be requiring a fee remission is likely to be the same regardless of whether they go through the UKBA maintenance and accommodation test.
53. We estimate that a percentage of appellants may decide not to apply for a remission under the Lord Chancellor's 'exceptional circumstances' if they have gone through the UKBA maintenance and accommodation test, and therefore have claimed to be able to maintain and support themselves. Thus, we expect that they would not claim they are unable to afford the fee.
54. As it is difficult to quantify this percentage, we have created a low scenario where we assume **all** those who were remitted under legal aid (2.5% of appellants) successfully apply for the Lord Chancellor's 'exceptional circumstances' **criteria even after going through the UKBA maintenance and accommodation test**. In the high scenario we have assumed none of those previously remitted successfully apply for a remission **after going through the UKBA's maintenance and accommodation test**. We have then based the most likely estimate to be a mid point between the low and high scenarios.
55. In the mid-point, as compared to the base case, 50% of the appellants whom previously would have requested a remission under 'exceptional circumstances' would now choose not to do so, HMCTS would acquire a small savings in the processing cost of 25k per annum.

## **Costs of Option 1**

### HMCTS

56. There is an administrative cost to process an 'exceptional circumstance' request under the Lord Chancellor's power. We have assumed that the processing cost of an 'exceptional circumstances' remission request using the Lord Chancellor's power to remit the fee may be the same as the cost of processing other remission requests (£32). However, we acknowledge that this may be slightly higher, owing to the additional time and resource required to consider, but we are unable to quantify the cost.
57. HMCTS may see a slight increase in the number of customer enquiries relating to the change and financial aspects of the different appeal process, and some administrative impact in terms of staff familiarising themselves with the changes, plus small changes to update the website and issued guidance. However, we expect any effect on HMCTS to be minimal and so have not quantified this.

### Appellants

58. As we expect that some appellants may decide not to apply for a remission under the Lord Chancellor's 'exceptional circumstances', these appellants will have to pay a fee to appeal an immigration decision. We estimate that the numbers of appellants paying a fee can be anywhere between 0 – 2.5% of all appellants (based on those that were previously remitted under legal aid) resulting in a maximum of £200k in appeal fees paid per annum.
59. Thus, in the mid-point, as compared to the base case, appellants whom now choose not to request a remission under 'exceptional circumstances' pay £100k in appeal fees.

### Business, Universities, Charities and Non-Profit Organisations

60. Some organisations could choose to take on the additional costs incurred by any appellant to whom they are providing assistance.

## **Benefits of Option 1**

### Appellants

61. As a single system will be in place, this option will not discriminate between those appellants that are overseas and those that are in the UK.

### HMCTS

62. As compared to the base case, HMCTS, would experience a small increase in income from appellants whom now choose not to request a remission under 'exceptional circumstances' of a 100K per annum.

### UKBA

63. UKBA could receive an increase in applications for Family Visit Visas because the visa fee is less (£78 for a stay up to 6 months] than the oral (£140) and paper (£80) appeal fee and some appellants may decide to re-apply for a visa instead of appealing. The

estimated number of Family Visit Visa appeals for 2012-2013 is 39,400, of which approximately 158 (less than 1%) may qualify for a fee remission. Therefore, on this basis and if volumes do not increase or decrease we can assume that this option could lead to a small increase in visa fee income. Full appeal rights for Family Visit Visas are due to be removed if the Courts and Crime Bill receives Royal Assent. This is currently planned for 2014.

### Taxpayers

64. The UK Exchequer effectively pays the costs of fee remissions; therefore there would be a small saving to the taxpayer because there would be fewer fee remissions for immigration appeals.

### **Option 2 (Rejected option) - Adopt HMCTS's current court fee remissions system for those making immigration appeals**

#### *Description*

65. The Civil and Family Courts and Probate Registries in England and Wales charge fees for work that is carried out in the courts. To ensure that access to courts is available for those who have difficulty paying a court fee HMCTS has in place a system of fee waivers and reductions, known as the remission system. It enables access to court services free of charge or at a reduced rate.

66. The current HMCTS court fee remission system for court fees consists of three eligibility criteria:

- **Remission 1** – A full fee remission for an individual in receipt of one of the following passported benefits: Income Support, Income-based Jobseekers Allowance, Pension Credit guarantee credit, Income-related Employment and Support Allowance and Working Tax Credit but not also receiving Child Tax Credit.
- **Remission 2** – A full fee remission for an individual or couple based on a means test to calculate gross annual income. Gross annual income not exceeding the stated threshold amounts in the following table will receive a full fee remission.

<b>Number of children of party paying a fee</b>	<b>Single</b>	<b>Couple</b>
0 Children	£13,000*	£18,000*
1 Child	£15,930	£20,930
2 Children	£18,860	£23,860
3 Children	£21,790	£26,790
4 Children	£24,720	£29,720

If 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 £2,930\* for each additional child.

\*The amounts contained in this table for an individual (and couple) are based on the Working Tax Credit thresholds set out by HM Revenue and Customs. The single child amount is based on the amount provided by Income Support for a dependant child.

- **Remission 3** – A full or partial fee remission for an individual based on an income and expenditure means test to calculate the individual's (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; and
- 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.

67. There are also 3 fixed allowances permitted as part of the means test for this criterion:

Partner	£159* per month
Dependant Children	£244* per month
General Living Expense	£315* per month

\*The amounts contained in this table for an individual (and couple) are 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.

68. Extending the current HMCTS court fees remissions system to immigration appeals would demonstrate a consistent approach, and could be appropriate for appellants that are in the UK as they would be likely to be able to apply under remission 1. If adopted, overseas appellants would need to apply under remission 2 or 3 because those living outside the UK will not be in receipt of benefits, so cannot use the remission 1 criteria to test eligibility.
69. To be considered for remission 2 or 3, out-of-country appellants would need to provide evidence of their income (in sterling). For Remission 2, out-of-country appellants would need to provide evidence of their annual income before tax and other deductions (gross annual income) for the 12 months preceding their remission application, and for Remission 3 they would need to give the court evidence of their monthly income once tax and deductions have been made (net monthly income).
70. The qualifying annual income and threshold amount for a single person is £13,000. For remission 2, out-of-country appellants must give evidence of their annual income before tax and other deductions (gross annual income) for the 12 months preceding their remission application e.g. three month's bank statements, wage slips, tax returns, rental income from properties, stocks, shares, bonds, child maintenance payments or any other income. When completing the required forms, income and expenditure must be shown in pounds sterling and all evidence must be in English or accompanied by a certified translation into English. Welsh courts can also accept evidence or certified translations in Welsh.
71. The table below shows the countries where immigration appellants originate from and the numbers of immigration appeals (managed migration, entry clearance officer, family visits appeal categories) received by HMCTS from 19<sup>th</sup> December 2011 to 30<sup>th</sup> June 2012.

**Table 1: Gross national income per capita of countries where the majority of immigration appellants originate who appealed an immigration decision during period 19<sup>th</sup> December 2011 to 30<sup>th</sup> June 2012.**

Country	Percentage of Appeals	Cumulative Percentage	Gross national income per capita \$ (2010 atlas method)	Average income per capita £ (assumes \$1.5 exchange rate)
Pakistan	27%	27%	\$1,050	£700
India	14%	40%	\$1,340	£893
Nigeria	11%	52%	\$1,180	£787
Bangladesh	8%	60%	\$640	£427
Ghana	3%	63%	\$1,240	£827
Sri Lanka	2%	65%	\$2,290	£1,527
Philippines	2%	68%	\$2,050	£1,367
China	2%	70%	\$4,260	£2,840
Iran	2%	72%	\$4,530	£3,020
Jamaica	2%	73%	\$4,750	£3,167
Zimbabwe	2%	75%	\$460	£307
All other Nationalities (n=163)	25%	100%	-	-

Excludes cases where remission decision is pending.

Source(s): Appeal numbers from HMCTS Management Information. Gross national income from World Development Indicators Database, World Bank 1 July 2011 <http://search.worldbank.org/all?qterm=gross%20national%20income>

72. The majority of immigration appellants originate from countries that have a lower cost of living than the UK. Therefore we can assume that many would be eligible for remission under the HMCTS remission scheme, as their income would be lower than the £13,000 threshold. This means that, under this system, we would effectively exempt the majority of overseas appellants from paying their immigration appeal fee and significantly reduce the out-of-country fee revenue generated from immigration appeal fees; making the overarching fees policy aim of the Tribunal user contributing to the cost of bringing an appeal (where they can) unworkable. It is also considered that, as a result of a larger number of appellants who could qualify and so may apply, the administrative cost of dealing with the remission applications would be prohibitive.
73. One of the difficulties in applying this type of income based system for out-of-country appellants is that there are different tax regimes in different countries which potentially would make the application of the remission scheme unfair. In addition, to calculate whether Remission 2 or 3 were met, a comparison would need to be made with overseas and UK market exchange rates, so a formula would need to be applied.
74. However, as market exchange rates vary on a daily basis and can change significantly over longer periods, it is not a reliable means of calculating a UK equivalent threshold. The demands of devising such a standard for every other country in the world is likely to be challenging, given the work involved in modelling this option, including the need for regular updates. Given the very complex nature of the calculations that would be required to run this type of remission system, verifying and validating the authenticity of any financial and salaried documentation (separately to the checks undertaken by UKBA) that we would require to make a remission assessment and the likelihood of constantly changing market exchange rates, this option is likely to be administratively time consuming, expensive and possibly impractical to pursue. It could further increase the risk of remissions being granted on a fraudulent basis, as it could be difficult to verify documentation and accurately assess financial information in some circumstances. Therefore, this option has been rejected.

## Costs of Option 2

### HMCTS

75. HMCTS's projected appeal volumes for out-of-country appellants in 2013-14 are 55,100 broken down to:

- Entry Clearance Officers (ECO): 15,400
- Family Visit Visas (FVV): 39,700

76. It is difficult to quantify how many of that number would be eligible for remission 2, but table 2 suggests that this is likely to be a significant number as the gross national income per capita is lower than HMCTS's threshold to qualify for remission 2. On that basis and applying the current 81/19 oral/paper split in ECO and 64/36 oral/paper split in FVV cases the financial implications would be as follows:

<b>Assuming that 50% of out of country appellants apply for and receive remission under the HMCTS scheme:</b>		
ECO 12,200 remissions	6,100 oral fees and 1,400 paper fees	Loss of income £1m
FVV 19,700 remissions	12,800 oral fees and 7,200 paper fees	Loss of income £2.4m
		<b>Total annual loss of income out of country £3.4m</b>
<b>Assuming that 75% of out of country appellants apply for and received remission under the HMCTS scheme:</b>		
ECO 18,300 remissions	9,100 oral fees and 2,100 paper fees	Loss of income £1.5m
FVV 29,600 remissions	19,200 oral fees and 10,800 paper fees	Loss of income £3.5m
		<b>Total annual loss of income out of country £5m</b>

77. 35% of in-country in-country appellants could potentially apply and successfully receive a remission based on MoJ Analytical Services modelling which says that circa 35% of UK population would be receive qualifying state benefits for remission 1.

78. Under this option we could expect an increase in the number of appeals made because the majority of appellants would be eligible for a remission. This would lead to an increase in the workload of operational staff to deal with enquiries (relating to the financial aspects of the claim and appeal process) and associated IT and administrative costs to manage the process.

### Taxpayers

79. Under remission 2, our assumptions indicate that the majority of appellants would qualify for a fee remission. This would increase the subsidy provided by the UK Exchequer as fee remissions are funded by the taxpayer.

## **Benefits of Option 2**

### Appellants

80. Our assumptions indicate that the majority of out-of-country appellants and a significant percentage of in-country appellants would qualify for a remission, so they would not be required to pay a fee.

### HMCTS

#### *Non-monetised benefit*

81. Adopting the current court fee remissions system operated by HMCTS to include immigration appeal fee remissions would demonstrate a consistent approach as the application criteria would be the same, which could lead to cost and efficiency savings.

## **Specific Impact Tests**

### **Equalities Impact Test**

82. An initial Equalities Impact Assessment has been prepared and should be read alongside the Impact Assessment.

### **Competition Assessment**

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

### **Small Firms**

84. Our preferred option does not impose a new requirement on small businesses, any payment of an appellant's costs remains a matter of choice for individual firms.

### **Greenhouse Gas Assessment**

85. The proposals are unlikely to have any significant impact on greenhouses gases. It is possible that fewer appellants will decide to travel for oral appeals and this could possibly reduce travel related emission. However, if there is any impact, we expect it to be minimal. Therefore, we have not quantified this impact.

### **Wider Environmental Impacts**

86. 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**

87. The proposal will impact HMCTS, specifically the First-tier Tribunal (Immigration and Asylum Chamber), as the proposal involves creating an appeal fees remission system, but we do not envisage there being any significant change to existing practices.

## **Human Rights**

88. 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**

89. 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 following health and social care services.

## **Rural proofing**

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

## **Sustainable Development**

91. 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 and the benefit this will bring to 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.