



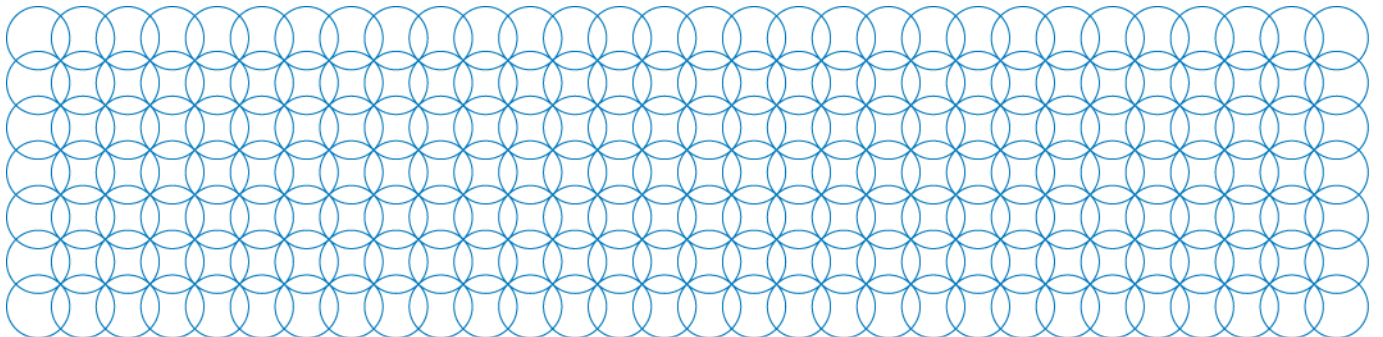
Ministry of
JUSTICE

Fee remissions in the First-tier Tribunal (Immigration and Asylum Chamber)

Consultation Paper CP24/2012

This consultation begins on 18th December 2012

This consultation ends on 29th January 2013





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**A consultation produced by the Ministry of Justice. It is also available on the
Ministry of Justice website at www.justice.gov.uk**

About this consultation

- To:** This consultation is aimed at all those with an interest in immigration matters or who will be affected by the proposals on fee remissions in the First-tier Tribunal (Immigration and Asylum Chamber).
- Duration:** From 18th December 2012 to 29th January 2013
- Enquiries (including requests for the paper in an alternative format) to:** Ministry of Justice
Immigration Appeals Fees Remissions Consultation
4th Floor (Post point 4.32)
102 Petty France
London SW1H 9AJ
Email: mojfeespolicy@justice.gsi.gov.uk
- How to respond:** Please send your response by 29th January 2013:
- By post:
Ministry of Justice
Immigration Appeals Fees Remissions Consultation
4th Floor (Post point 4.32)
102 Petty France
London SW1H 9AJ
- E-mail:
mojfeespolicy@justice.gsi.gov.uk
- Online:
Responses to the consultation can be submitted directly through the Ministry of Justice website at www.justice.gov.uk/consultations
- Response paper:** A response to this consultation exercise is due to be published in March 2013 at:
www.justice.gov.uk/consultations

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Executive Summary

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.

Fee charges for immigration and asylum appeals to be heard in the Immigration and Asylum Chamber of the First-tier Tribunal were introduced on 19th December 2011. Alongside this, fee exemptions and remissions were also introduced to ensure that the poorest appellants were not denied the opportunity to access the Tribunal to determine their appeal if they cannot pay the fee (or have it paid on their behalf). One of these remissions enables appellants that are in receipt of legal aid to qualify for an exemption from paying an appeal fee.

When the relevant provisions of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) comes into force in April 2013, a number of changes will be made to the scope of legal aid in England and Wales.¹ These will include the removal of legal aid for most immigration appeals.

We currently utilise the fact that legal aid solicitors establish whether or not immigration appellants meet the financial eligibility criteria and qualifies for legal aid. If they do and receive legal aid they are then exempt from paying an appeal fee. In 2012-2013 we estimate that this will apply in approximately 2,500 (non-asylum) immigration appeals out of the 92,000 (non-asylum) immigration appeals that will be made to the Tribunal.

As this process will change from April 2013, we need to consider an alternative means to establish for ourselves whether or not any of these 2,500 immigration appellants can pay the fee or should have their appeal fee remitted (if they do not first qualify for any other exemption) under the Lord Chancellor's power to reduce or remit the fee. This will ensure that these particular immigration appellants can use the Tribunal to determine their appeal and can exercise their rights under the European Convention on Human Rights through the appellate system.

We said in our consultation paper on introducing fees for immigration and asylum appeals² in October 2010, that if proposals were taken forward in the future following the Department's review of legal aid³ which affect the availability of legal aid in immigration appeals - and consequently our assumptions about the impact of charging appeal fees to appellants of limited means - we would consult again on our

¹Further detail about Legal Aid entitlement can be found at www.legalservices.gov.uk for England and Wales, www.slab.org.uk in Scotland and for Northern Ireland www.nilsc.org.uk.

²www.justice.gov.uk/consultations/consultations-CP10-10

³webarchive.nationalarchives.gov.uk/20111121205348/http://www.justice.gov.uk/consultations/legal-aid-reform.htm

remissions and exemptions policy, in respect of the fees, to ensure that access to Tribunals in immigration appeals is appropriately maintained.

We have set out our proposals to how this can be achieved in this consultation paper.

In summary, our proposal:

- Identifies an alternative means to establish whether or not immigration appellants can pay the fee or should have their appeal fee remitted;
- Retains all other current exemptions;
- Retains the Lord Chancellor's power to reduce or remit fees;
- Maintains a different fee remission system for immigration appeals (than the wider HMCTS court fee remission system), that does not unfairly discriminate between in-country and out-of-country appellants;
- Aims 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); and
- Will not require amendment of the First-tier Tribunal (Immigration and Asylum Chamber) Fees Order 2011.

Introduction

1. This consultation paper sets out our proposal for addressing the removal of immigration legal aid in England and Wales, from the current immigration fees exemptions, which forms part of the fees exemptions and remissions system for the First-tier Tribunal (Immigration and Asylum Chamber). These exemptions and remissions enable appellants that cannot pay an appeal fee (or have it paid on their behalf) to access the Tribunal to determine their appeal against an immigration decision. We are not proposing to make any other changes to this system and are therefore not proposing to change the fees order.
2. The consultation is aimed at anyone who has an interest in immigration, asylum and nationality matters or who would be affected by the forthcoming changes to immigration legal aid in England and Wales, meaning that they would no longer qualify for legal aid and therefore no longer receive a fee exemption for immigration appeals.
3. The accompanying Impact Assessment indicates that immigration appellants are likely to be particularly affected by the proposal. The Impact Assessment and the initial Equality Impact Assessment are published alongside this consultation paper. Comments on both are very welcome.
4. Copies of the consultation paper are being sent to:
 - Administrative Justice and Tribunals Council
 - The Association of Regulated Immigration Advisors
 - Asylum Aid
 - Bail for Immigration Detainees
 - Bar Council of Northern Ireland
 - The Children's Society
 - Citizen's Advice Bureau
 - Eaves
 - Equality and Human Rights Commission
 - Ethnic Minority Law Centre
 - Federation of Small Businesses

- General Council of the Bar
- Immigration Advisory Service
- Immigration Law Practitioners Association
- International Care Network
- Joint Council for the Welfare of Immigrants
- Law Centre (NI)
- Law Society
- Legal Action Group
- Legal Services Commission
- Liberty
- Lord Chief Justice of England and Wales
- Lord Chief Justice of Northern Ireland's Office
- Lord President's Office-Scotland
- The National Assembly For Wales
- National Association for Voluntary and Community Action
- Northern Ireland Legal Services Commission
- Oaks Solicitors
- The Office of the Immigration Services Commissioner
- Public Law Project
- Refugee Action
- Refugee Council
- Rights of Women
- Senior President of Tribunals
- Scottish Legal Aid Board
- The Scottish Parliament

- The Scottish Government
- UK Council for International Student Affairs
- University College London Union
- The Welsh Assembly Government
- Women's Resource Centre
- Young Legal Aid Lawyers

Background

5. 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.
6. Fee charges for immigration and asylum appeals to be heard in the Immigration and Asylum Chamber of the First-tier Tribunal were introduced on 19th December 2011. Prior to this date, there was no charge for these appeals as the costs were funded largely 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 cost of their appeal.
7. Following the consultation response (published in May 2011) to establish appeal fees in the Immigration and Asylum Chamber⁴, the First-tier Tribunal (Immigration and Asylum Chamber) Fees Order 2011⁵ (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, as proposed in the consultation paper, and therefore a taxpayer subsidy remains in place.
8. 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);

⁴webarchive.nationalarchives.gov.uk/20111121205348/http://www.justice.gov.uk/consultations/consultations-CP10-10.htm

⁵SI 2011/2841

- 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.
9. 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.
10. 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.
11. The coming into force of the relevant provisions of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 in April 2013 will see a number of changes to the scope of legal aid in England and Wales, including the removal of legal aid provision for most non-detention immigration cases. Appellants in the following key appeal categories will be most affected, as a result of these changes:
- **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 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.⁶

⁶ www.ukba.homeoffice.gov.uk/eucitizens/

12. We currently utilise the fact that legal aid solicitors establish whether or not appellants meet the financial eligibility criteria for legal aid⁷. If they do and receive legal aid then they are then exempt from paying an appeal fee. This enables us to ensure that the poorest appellants are able to use the Tribunal to determine their appeal. The removal of legal aid provision in England and Wales for most immigration cases from April 2013 will mean that appellants in those immigration 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 if they wish to use the Tribunal to determine their appeal, unless they qualify for any other exemption listed in paragraph 8 or have the fee paid for on their behalf. If these appellants do not qualify for another exemption then they could apply for a remission under the Lord Chancellor's power to reduce or remit the fee if due to 'exceptional circumstances' they are unable to pay the appeal fee.

⁷For 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

Our Proposals

13. In the majority of cases, appellants wishing to appeal an immigration decision pay the required fee to the Tribunal to determine their appeal. If an appellant is in receipt of legal aid then we do not currently charge an appeal fee. This fee exemption forms part of our exemptions and remissions system to ensure that those that cannot pay the fee can still access the Tribunal. The projected appeal volumes for Managed Migration, Entry Clearance Officer and Family Visit Visa appeals in 2012-2013 are 92,000. The estimated number of appeals that will not require payment because the appellant received legal aid is approximately 2,500.
14. When the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 comes into force in April 2013, many immigration appellants will no longer qualify for legal aid and will lose the current fee exemption. As the number of appellants that will no longer be exempt because they will no longer receive legal aid is relatively small, in terms of the total number of Tribunal users, and because the other exemptions and remissions ensure that the poorest appellants are able to access the Tribunal, it is our view that the current remission system does not need to be radically changed. (None of our other existing exemptions or remissions will be affected because of these reforms).
15. Therefore, when considering our options we looked to revise only the part of the remission system that will be directly affected by the removal of the legal aid provision in England and Wales (and therefore the removal of the related fee exemption) and propose to retain all other elements of our existing remission and exemption system as detailed in paragraphs 8 and 9.
16. We currently utilise the fact that legal aid solicitors establish whether or not appellants meet the financial eligibility criteria for legal aid. If they do and receive legal aid they are then exempt from paying an appeal fee. The removal of legal aid provision in England and Wales 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; or
 - 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.
17. The aim of the proposal is 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.

18. We believe that the simplest way of doing this, both for the immigration appellants themselves and for us to administer, is set out in our preferred option below.

Preferred Option

19. It is the Government's view that appellants seeking a visa should be capable of supporting themselves while they are in the UK without recourse to public funds (or are supported by a third party e.g. a family member), and should therefore, in most cases, be able to pay the appeal fee (or are able to have the fee paid for on their behalf) to contribute towards the cost of the administration of that appeal. This is reflected in our preferred option for immigration appeal remissions.
20. This option will 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 such an 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.

Reliance on the UKBA's assessment

21. The UKBA guidance on the Immigration Rules in relation to maintenance and accommodation matters⁸ states that the majority of the Rules require applicants to be able to be maintained and accommodated (and any of their dependants) by themselves or friends or relatives, without additional recourse to public funds. This is set out in Annex A.
22. The maintenance and accommodation provisions aim to give parity to those residing in the UK, in terms of income support level, where applicants need to be able to demonstrate that they will be able to maintain and support themselves (or will be maintained and supported by a third party) whilst in the UK in order for their application to be granted (either by funding themselves or being sponsored).
23. Therefore, we consider that if an appellant contends that they can maintain and support themselves (or are maintained and supported by a third party) whilst in the UK, that they should be able to afford the relatively small fee for an appeal (or have the fee paid by a

⁸www.ukba.homeoffice.gov.uk/policyandlaw/guidance/ecg/maa/

third party). That is our starting point. This option therefore, would see the remissions policy usually rejecting any application for a remission on financial hardship grounds where the appellant claims they meet the maintenance and accommodation provisions in the Immigration Rules.

24. However, we accept that the various maintenance and accommodation tests in the Immigration Rules do not make provision for (and are not intended to make provision for) an amount for an appeal fee. Therefore while the starting point would be that an appellant ought, in most cases, to be able to pay the appeal fee (themselves or by a third party), the proposal is that, if despite being able to maintain and support themselves (or are maintained and supported by a third party), an appellant claims they would not be able to pay the appeal fee (or have it paid on their behalf), we would consider an application for the Lord Chancellor to exercise his discretion in the appellant's favour and reduce or remit the fee. We believe that this is an appropriate and fair process.
25. Further, we propose to use the same approach 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.
26. If an appellant from this group does not qualify for any other exemption (see paragraph 8), 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.

Question 1

Do you agree with our proposed approach to fee exemptions and remissions for the First-tier Tribunal (Immigration and Asylum Chamber)? Please give reasons.

Question 2

If you do not agree with our proposed approach to fee exemptions and remissions for the First-tier Tribunal (Immigration and Asylum Chamber), what other approach do you think should be considered and why? Please give reasons.

Equality Impact Assessment

27. We have developed an initial Equality Impact Assessment (it accompanies this consultation document) which details how we consider our proposals are likely to affect people with protected characteristics.
28. We do not think the preferred proposal would give rise to direct discrimination towards any group. It is not expected to lead to less favourable treatment because of a protected characteristic. Our initial assessment, based on the limited information available, is that there may be the potential for an adverse differential impact on some equality groups appealing a Managed Migration, Entry Clearance Officer or Family Visit Visa immigration decision who will no longer receive a fee exemption because they will no longer receive legal aid. For example, women and people from ethnic minority backgrounds such as Somalia, Nigeria, Pakistan or Eritrea. However, we consider it unlikely that those impacts will result in indirect discrimination, as all appellants would have an avenue to apply for a remission if they are unable to pay an appeal fee. Further, the Government considers the proposals to be a proportionate means of achieving a legitimate aim.

Question 3

What do you consider to be the potentially positive or adverse equality impacts on appellants appealing an immigration decision of the proposed remission system for immigration appeals?

Question 4

How could these impacts be mitigated?

Question 5

Are you aware of any further evidence that could aid our analysis of potential equality impacts? If so please provide us with this evidence.

Rejected Option

29. We considered extending HMCTS's existing court fee remission system to cover immigration appeals. However, we ruled this out primarily because of the complexity and associated costs of adopting it for a large number of out-of-country remission requests. At present this is approximately two-thirds of all immigration appellants.

30. The remission system either waives or reduces fees to those that are eligible, so they can access court services if they have difficulty paying court fees. It is formed of three types of remissions. The first is available for individuals who are in receipt of certain UK benefits. The second is a means test where individuals' or couples' gross annual income is assessed and if it is under certain thresholds (e.g. the qualifying annual income and threshold amount for a single person is £13,000) then they can receive a remission. The third provides a full or part remission for an individual which is based on an income and expenditure means test to calculate their (and their partners, if applicable) monthly disposable income. Full details of the remission system are set out in the leaflet (EX160A) *Court fees – Do I have to pay them?*⁹ Annex B provides a summary.
31. Under this option, immigration appellants that are living in the UK and meet the eligibility criteria would be able to apply for any of these remissions, but out-of-country appellants would not be able to apply for remission 1 because they would not receive UK benefits. 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).
32. 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 immigration 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.
33. 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. 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

⁹www.hmcts-service.gov.uk/courtfinder/forms/ex160a_web_1010.pdf

(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 fraudulent basis as it could be difficult to verify documentation and accurately assess financial information in some circumstances. Therefore, this option has been rejected.

Equality Impact Considerations of the Rejected Option

34. The Equality Impact Assessment which accompanies this consultation paper provides details of the equalities impacts of the rejected option, but in summary:

- Equalities impacts are likely to be on the same overall race and gender groups as the preferred option.
- Based on the limited data, it is not entirely clear what the change in equalities impacts on these appellants with protected characteristics would be from selecting the preferred option over the rejected option.
- If this option could be made to work, more poorer overseas appellants in these particular age and race groups would be likely to have their appeal fee remitted.
- While more appellants would be likely to receive a fee remission under this option than under our preferred option, the rejected option is not considered to be a workable solution for a large number of people from overseas countries - especially since it will be more difficult for some appellants than others to provide their financial details to be considered for a remission which could reduce any potential protection in relation to race and gender.

Annex A

UKBA guidance on the Immigration Rules,

The UKBA guidance on the Immigration Rules in relation to maintenance and accommodation matters¹⁰ states that the majority of the Rules require applicants to be able to be maintained and accommodated (and any of their dependants) by themselves or friends or relatives, without additional recourse to public funds. There is no objection to the British citizen / settled sponsor receiving any public funds to which he / she is entitled in his / her own right.

The Rules state that there is no explicit minimum figure for what represents sufficient maintenance, and if dependants of the main applicant are going to accompany him / her to the United Kingdom, resources must be available for the whole family unit to be maintained. If it is more likely than not that the total amount that the applicant and sponsor will have to live on will be below what the income support level would be for a British family of that size, then the application may be refused on maintenance and accommodation grounds.

Maintenance may be provided by either:

- The applicant with their own funds or with funds available to them; or
- The sponsor; or
- A combination of applicant and sponsor funds; or
- Third party support (A couple or other applicant who is / are unable to produce sufficient evidence to meet the maintenance requirement may provide an undertaking from members of their families that those members will support the couple / applicant until they are able to support themselves from their own resources. Third party support is not precluded from consideration under the maintenance requirements relating to spouses, civil partners, fiancé(e)s, proposed civil partners, unmarried partners, same-sex partners, children, parents, grandparents and other dependent relatives of sponsors who are settled in the UK).

Assessing adequate means of maintenance

The following list sets out an example of the factors which UKBA consider when assessing means of maintenance:

- The applicant's past and current employment;
- Do the applicant's / sponsor's educational qualifications and any other skills or qualifications offer a reasonable chance of obtaining employment? If so, that should be viewed as sufficient to meet the maintenance requirement without having to make further enquiries;

¹⁰www.ukba.homeoffice.gov.uk/policyandlaw/guidance/ecg/maa/

- The sponsor's current or proposed employment;
- Any plans the applicant has for employment in the UK;
- What is the unemployment situation in the area in which the couple intend to settle? High unemployment in a particular area or amongst a certain age group with particular skills (or lack of them), is not in itself sufficient to show that the maintenance requirement has not been met. It would be a relevant factor if the couple's plans were not realistic or if they did not have any skills or qualifications;
- Any arrangements which have been made, or could be made, by the sponsor, any other relatives, friends or contacts in the UK in connection with the plans for employment;
- Satisfied that job offers are genuine and the work likely to last for the foreseeable future; and
- Any support which will be forthcoming from others.

Assessing adequate accommodation

UKBA need to be satisfied that the accommodation complies with the following requirements:

- It is (or will be) owned or legally occupied for the exclusive use of the couple; and
- It is capable of accommodating the couple, and any children, without overcrowding as defined in the Housing Act 1985.¹¹

Depending on the circumstances of the case, there may be other relevant factors; for example, the Entry Clearance Officer should be satisfied that housing the couple in rented accommodation will not be in breach of any tenancy agreement as regards sub-letting.

¹¹www.legislation.gov.uk/ukpga/1985/68/contents

Annex B

HMCTS Remission System

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.

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.

The current HMCTS 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.

Number of children of party paying a fee	Single	Couple
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.
 - 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.

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.

Individuals that live outside of England and Wales or are a foreign national can apply for a fee remission. However, the benefits listed under Remission 1 are only available to people who live within the United Kingdom, Republic of Ireland, Channel Islands or Isle of Man. When making an application, all entries for 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.

Questionnaire

We would welcome responses to the following questions set out in this consultation paper:

Q1. Do you agree with our proposed approach to fee exemptions and remissions for the First-tier Tribunal (Immigration and Asylum Chamber)? Please give reasons.

Q2. If you do not agree with our proposed approach to fee exemptions and remissions for the First-tier Tribunal (Immigration and Asylum Chamber), what other approach do you think should be considered and why? Please give reasons.

Equality Impact Assessment Questions

Q3. What do you consider to be the potentially positive or adverse equality impacts on appellants appealing an immigration decision of the proposed remission system for immigration appeals?

Q4. How could these impacts be mitigated?

Q5. Are you aware of any further evidence that could aid our analysis of potential equality impacts? If so please provide us with this evidence.

Thank you for participating in this consultation exercise.

About You

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable)	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Contact Details/How to Respond

Please send your response by 29th January 2013:

By post:

Ministry of Justice
Immigration Appeals Fees Remissions Consultation
4th Floor (Post point 4.32)
102 Petty France
London SW1H 9AJ

E-mail:

mojfeespolicy@justice.gsi.gov.uk

Online:

Responses to the consultation can be submitted directly through the Ministry of Justice website at www.justice.gov.uk/consultations

Extra copies

Further paper copies of this consultation can be obtained from the above address and it is also available on-line at www.justice.gov.uk/consultations

Alternative format versions of this publication can also be requested by contacting the postal or e-mail address above.

Publication of response

A paper summarising the responses to this consultation will be published in March 2013. It will be available on-line at www.justice.gov.uk/consultations

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for

disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Consultation Co-ordinator contact details

Responses to the consultation must go to the named contact under the How to Respond section.

However, if you have any complaints or comments about the consultation **process** you should contact Sheila Morson on 020 3334 4498, or email her at consultation@justice.gsi.gov.uk.

Alternatively, you may wish to write to the address below:

**Ministry of Justice
Consultation Co-ordinator
Better Regulation Unit
Analytical Services
7th Floor, 7:02
102 Petty France
London SW1H 9AJ**

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