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|--|---|--|--|-------------------------|--|
| Title: Immigration and Asylum Chamber Full Cost Recovery IA No: MoJ025/2016 RPC Reference No: N/A Lead department or agency: MOJ Other departments or agencies: HM Courts and Tribunals Service | Impact assessment (IA) | | | | |
| | Date: 08/09/2016 | | | | |
| | Stage: Final | | | | |
| | Source of intervention: Domestic | | | | |
| | Type of measure: Secondary Legislation | | | | |
| Contact for enquiries: mojfeespolicy@justice.gsi.gov.uk | | | | | |
| Summary: Intervention and Options | | | | RPC Opinion: 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 2014 prices) | In scope of One-In, Three-Out? | Measure qualifies as | |
| -£1m | NK | NK | Not in scope | N/A | |
| What is the problem under consideration? Why is government intervention necessary? While the running costs of the First-tier Tribunal Immigration and Asylum Chamber (FTT) and the Upper tribunal Immigration and Asylum Chamber (UT) were £86 million in 2015-16, only £7 million in income was received, so representing a net cost to the taxpayer of around £79 million. The Government believes that, in light of the current financial circumstances, it is no longer justifiable that the taxpayer should be responsible for funding the majority of the costs of administering these cases. | | | | | |

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| What are the policy objectives and the intended effects? The Ministry of Justice's (MoJ) overall policy aim is that the courts and tribunals are resourced in such a way that access to justice is protected while the costs to the taxpayer are reduced. The policy aim is therefore, for specific proceedings within the FTT and UT, to charge fees at cost recovery levels so that users meet the full cost of these Chambers. |
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| What policy options have been considered, including any alternatives to regulation? Please justify preferred option. The following options are considered: <ul style="list-style-type: none"> Option 0: Do Nothing. The current fee structure would remain in place. Option 1: Increase fees for the FTT to full cost recovery levels, and introduce a new exemption for those appellants who are in receipt of a Home Office destitution waiver in respect of their initial visa application fee. Option 2: Introduce fees at full cost recovery levels for the First Tier Permission to Appeal in the FTT, and Upper Tribunal Permission to Appeal and Upper Tribunal Appeal stages in the UT, and apply the same exemptions that apply at the First Tier Appeal. Option 3: Option 1 and Option 2 combined. The Government's preferred option is to implement Option 3 as this best meets the policy objective. |
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|---|--|--------------|-------------|---------------------------|---------------|
| Will the policy be reviewed? It will not be reviewed. If applicable, set review date: | | | | | |
| Does implementation go beyond minimum EU requirements? | | | | N/A | |
| Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base. | | Micro Yes | < 20 Yes | Small Yes | Medium Yes |
| What is the CO₂ equivalent change in greenhouse gas emissions? (Million tonnes CO₂ equivalent) | | | | Traded: N/A | |
| | | | | Non-traded: N/A | |

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

Signed by the responsible Minister: Elizabeth Truss _____ **Date:** 14/09/16 _____

Summary: Analysis and Evidence

Policy Option 1

Description: Increase fees for the First Tier Appeal stage (paper and oral applications) in the First-tier Tribunal of the Immigration and Asylum Chamber to full cost recovery levels.

| Price Base Year 2016 | PV Base Year 2016 | Time Period Years 10 | Net Benefit (Present Value (PV)) (£m) | | |
|-------------------------|----------------------|-------------------------|---------------------------------------|------------|---------------------|
| | | | Low: -0.1 | High: -0.1 | Best Estimate: -0.1 |

| COSTS (£m) | Total Transition (Constant Price) | | Average Annual (excl. Transition) (Constant Price) | Total Cost (Present Value) |
|----------------------|--------------------------------------|---|---|-------------------------------|
| | Years | | | |
| Low | 0.1 | 1 | 17 | 150 |
| High | 0.1 | | 34 | 295 |
| Best Estimate | 0.1 | | 26 | 223 |

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

HM Courts and Tribunals Service (HMCTS) would face one-off transitional costs of less than £0.1 million from implementing the proposed changes. Tribunal users will bear the cost of the new fees, paying an additional £24 million in year 1 and £26 million a year in steady state for paper and oral applications in the FTT.

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

Appellants may face a cash flow cost as fees are initially paid upfront although after a judgement takes place, and if a decision is in the appellant's favour, the respondent may then be required to repay the fee. There will also be some familiarisation costs for tribunal users and their legal representatives.

| BENEFITS (£m) | Total Transition (Constant Price) | | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) |
|----------------------|--------------------------------------|---|---|----------------------------------|
| | Years | | | |
| Low | 0 | 1 | 17 | 150 |
| High | 0 | | 34 | 295 |
| Best Estimate | 0 | | 26 | 222 |

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

HMCTS will receive an additional £24 million in year 1 and an additional £26 million a year steady state from the fee increase. This will help to cover the cost of the First Tier appeal stage in the FTT, thus reducing the cost to the taxpayer.

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

HMCTS may experience lower running costs if a lower volumes of cases go to the tribunal.

Key assumptions/sensitivities/risks

- While our central scenario is based on the assumption that fee changes will cause a 20 per cent fall in demand, the analysis also considers the impact of a zero per cent and a 40 per cent fall in caseloads. In this analysis, our high scenario (zero per cent) is based on evidence of changes in caseloads following the introduction of fees in the Immigration and Asylum Chamber (IAC) in 2011, while the low scenario (a 40 per cent fall) draws on caseload evidence following the introduction of enhanced fees for money claims. Our central estimate is the mid-point of these two figures. The drop in caseload is assumed to be because individuals choose to no longer bring a claim as a result of the higher fees.
- It is assumed that caseload at each subsequent stage of the appeals process will also fall by between zero per cent and 40 per cent, with a central estimate of 20 per cent.
- It has also been assumed that there will be no detrimental impact on tribunal case outcomes, on access to justice and on the legal services used to pursue or defend each claim from the increase in fees.

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

Summary: Analysis and Evidence

Policy Option 2

Description: Introduce fees at full cost recovery levels for the First Tier Permission to Appeal (FTPA) in the First-tier Tribunal and Upper Tribunal Permission to Appeal (UTPA) and Upper Tribunal Appeal stages in the Upper Tribunal.

| Price Base Year 2016 | PV Base Year 2016 | Time Period Years 10 | Net Benefit (Present Value (PV)) (£m) | | |
|-------------------------|----------------------|-------------------------|---------------------------------------|----------|-------------------|
| | | | Low: 0 | High: -2 | Best Estimate: -1 |

| COSTS (£m) | Total Transition (Constant Price) | Years | Average Annual (excl. Transition) (Constant Price) | Total Cost (Present Value) |
|----------------------|--------------------------------------|-------|---|-------------------------------|
| Low | 0.5 | 1 | 7 | 63 |
| High | 1.5 | | 13 | 111 |
| Best Estimate | 1.0 | | 10 | 86 |

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

HMCTS would face one-off transitional costs of around £1 million from implementing the proposed changes. Users will bear the cost of the new fees, paying an additional £9 million in year 1 and £10 million a year in steady state for FTPA in the FTT and, UTPA and Upper Tribunal Appeal stages in the UT.

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

Appellants may face a cash flow cost as fees are initially paid upfront although after a judgement takes place, and if a decision is in the appellant’s favour, the respondent may then be required to repay the fee(s). There will also be some familiarisation costs for tribunal users and their legal representatives.

| BENEFITS (£m) | Total Transition (Constant Price) | Years | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) |
|----------------------|--------------------------------------|-------|---|----------------------------------|
| Low | 0 | 1 | 7 | 63 |
| High | 0 | | 13 | 109 |
| Best Estimate | 0 | | 10 | 85 |

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

HMCTS will receive an extra £9 million in year 1 and £10 million a year in steady state from the fee increases. This will help cover the full costs of the FTPA stage in the FTT and UTPA and Upper Tribunal appeal stage in the UT and so reduce the cost to the taxpayer.

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

HMCTS may experience lower running costs if a lower volumes of cases go to the tribunal.

Key assumptions/sensitivities/risks

- Our central scenario assumes that there is no change in demand at the appeal stage in the FTT, as fees are not changing. It also assumes the introduction of fees will cause a fall in demand of 18 per cent at both the FTPA in the FTT and UTPA in the UT. It does not assume any further fall in demand at the appeal stage in the UT.
- The analysis also considers the impact of a zero per cent and a 36 per cent fall in demand at both the FTPA in the FTT and UTPA in the UT. In the analysis, our high scenario (zero per cent) scenario is based on evidence of changes in caseloads following the introduction of fees in the FTT in 2011, while the low scenario (a 36 per cent fall) scenario compares the progression of cases in the FTT and UT (where there are no fees beyond the first appeal) with the progression of judicial reviews in the UT (where there are fees for later stages).
- It has also been assumed that there will be no detrimental impact on tribunal case outcomes, on access to justice and on the legal services used to pursue or defend each claim from the increase in fees.

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

Summary: Analysis and Evidence

Policy Option 3

Description: Option 1 and Option 2 combined

| Price Base Year 2016 | PV Base Year 2016 | Time Period Years 10 | Net Benefit (Present Value (PV)) (£m) | | |
|-------------------------|----------------------|-------------------------|---------------------------------------|----------|-------------------|
| | | | Low: 0 | High: -2 | Best Estimate: -1 |

| COSTS (£m) | Total Transition (Constant Price) | Years | Average Annual (excl. Transition) (Constant Price) | Total Cost (Present Value) |
|---------------|--------------------------------------|-------|---|-------------------------------|
| Low | 0.6 | 1 | 22 | 188 |
| High | 1.6 | | 47 | 406 |
| Best Estimate | 1.1 | | 34 | 292 |

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

HMCTS would face one-off transitional costs of around £1 million from implementing the proposed changes. Users will bear the cost of the new fees, paying an additional £31 million in year 1 and £34 million a year in steady state.

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

Appellants may face a cash flow cost as fees are initially paid upfront although after a judgement takes place, and if a decision is in the appellant's favour, the respondent may then be required to repay the fee. There will also be some familiarisation costs for tribunal users and their legal representatives.

| BENEFITS (£m) | Total Transition (Constant Price) | Years | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) |
|---------------|--------------------------------------|-------|---|----------------------------------|
| Low | 0 | 1 | 22 | 188 |
| High | 0 | | 47 | 404 |
| Best Estimate | 0 | | 34 | 291 |

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

HMCTS will receive an extra £31 million in year 1 and £34 million a year in steady state from the fee increases. This will help cover the full costs of the IAC.

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

HMCTS may experience lower running costs if a lower volumes of cases go to the tribunal.

Key assumptions/sensitivities/risks

- Our central scenario assumes that there is a 20 per cent change in demand at the appeal stage in the FTT, as in Option 1. It also assumes the introduction of fees will cause a fall in demand of 18 per cent at both the FTPA stage in the FTT and the UTPA stage in the UT as in Option 2. It does not assume any further fall in demand at the appeal stage in the UT.
- The analysis also considers the impact of a zero per cent and 40 per cent fall in demand at the appeal stage of the FTT and a zero per cent and a 36 per cent fall in demand at both the FTPA stage in the FTT and UTPA stage in the UT.
- It has also been assumed that there will be no detrimental impact on tribunal case outcomes, on access to justice and on the legal services used to pursue or defend each claim from the increase in fees.

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

Evidence Base

A. Background

The Immigration and Asylum Chamber

1. The Immigration and Asylum Chambers (IAC – see Annex A for a full list of acronyms) mainly deals with appeals relating to individuals who have had their application for asylum refused or have been denied permission to come to the UK or to vary the terms of their current leave to remain in the UK by the Home Office.
2. Individuals who dispute these decisions can bring an appeal to the First-tier Tribunal (FTT) of the IAC. This is referred to as the First-tier appeal (FTA) stage, and involves an application followed, in most instances, by either a paper or oral hearing and a decision made by a judge.
3. If the losing party believes there has been an error of law in the decision at the FTA stage they can apply for permission to appeal to the Upper Tribunal (UT) of the IAC. The losing party must apply for permission to appeal, firstly to the FTT (this is referred to as the First-tier permission application (FTPA) stage), and, if they are rejected, can apply for permission to appeal in the UT (known as the Upper Tribunal permission application (UTPA) stage). A judge will usually decide a permission to appeal application on the papers, rather than at an oral hearing.
4. If the losing party at the FTA stage is granted permission to appeal at either the FTPA or the UTPA stage then their appeal moves to the Upper Tribunal appeal (UTA) stage, which involves another judge making a decision following a further hearing or remitting the case back to the FTT for a new decision (this process is illustrated at Annex B).

The Principle of Cost Recovery

5. The principle of charging fees in the courts and tribunals is a long established one, and it is a means by which the Government ensures that those who use the service provided make a financial contribution. It was on this basis that fees were introduced into the FTT for the first time in 2011 under the statutory power contained at section 42 of the Tribunals, Courts and Enforcement Act 2007.
6. The fees set under this statutory power were only set for the FTA stage and were £80 for a consideration on the papers and £140 for an oral hearing. There were no fees charged for either of the permission to appeal stages (FTPA and UTPA) or for an appeal in the UT (the UTA stage). Under these fees, the income generated in 2015-16 (net of remissions and exemptions) was around £7 million, which was around 9 per cent of the total cost of the FTT and UT¹.
7. Guidance published by Her Majesty's Treasury *Managing Public Money*² sets out that where those who use a public service are charged a fee to access it those fees should normally be set at a level designed to recover the full costs of the service. In July 2015 the Government published a consultation document seeking views on a proposal to double the fees currently charged at the FTA stage, with the aim of achieving around 25 per cent cost recovery in the FTT³. In December 2015 the Government indicated it was planning to proceed with that proposal.
8. However, the Government has now reconsidered that decision and decided that, in light of the current financial circumstances, it was no longer justifiable that the taxpayer should be responsible for funding the majority of the costs of administering these cases. This means we will bring these fees in line with the normal rules of managing public money and those liable to pay a fee, both in the FTT and the UT, will be expected to cover the full cost of the service they receive.

¹ The total operating cost for the Immigration and Asylum Chamber was £86 million in 2015-16. This excludes the cost judicial review hearings heard in the Upper Tribunal.

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/454191/Managing_Public_Money_AA_v2_-_jan15.pdf

³ The total operating cost for the First-tier Tribunal was £75 million in 2015-16

Consultation

9. A consultation on the proposals in this impact assessment (IA) ran for 6 weeks from 28 April to 3 June 2016. The consultation proposed increasing the fees charged in the FTT to full cost recovery for those who pay and introducing fees, at cost recovery levels, for permission to appeal applications in FTT and UT and hearings in the UT. We received 150 responses to the consultation. The respondents included law firms, members of the judiciary, professional bodies, academic institutions, charities, and individual members of the public.
10. The consultation also sought views on possible extensions to the fee exemptions scheme that applies in the FTT. After considering the responses very carefully the Government has decided to introduce additional exemptions for those appellants who are in receipt of a Home Office destitution waiver in respect of their initial visa application fee. We will also apply the same exemptions that apply in the FT to FTPAs, UTPAs and UT hearings. The impact of these changes are set out in Section E.

B. Policy Rationale and Objective

11. The Ministry of Justice's (MoJ) aim is that the courts and tribunals are adequately resourced in such a way that access to justice is protected while the costs to the taxpayer are reduced. The policy aim is therefore, for specific proceedings within the FTT and UT, to charge fees at cost recovery levels so that users of the system make a greater contribution towards the overall costs of the Immigration and Asylum Chambers.

C. Affected Stakeholder Groups, Organisations and Sectors

12. These reforms would primarily affect individuals pursuing cases through the FTT and UT. A list of all the main groups that would be affected are show below:
 - Appellants within the Immigration and Asylum Chambers.
 - Respondents within the Immigration and Asylum Chambers.
 - HM Courts and Tribunals Service (HMCTS): the body that administers the Tribunal Service.
 - Legal services providers, who represent appellants and may pay fees on behalf of their clients.
 - Taxpayers: through a reduction in the subsidy currently provided by the UK Exchequer towards the running and operating costs of HMCTS.

D. Description of Options Considered

13. As outlined above, in July 2015 the Government considered an option of moving towards 25 per cent cost recovery in the FTT of the Immigration and Asylum Chamber, which would have resulted in fees of £160 for a paper consideration and £280 for an oral hearing. When consulting on that proposal there was an indication that the Government would revisit the position with regards to the UT of the Immigration and Asylum Chamber in due course. However, the Government has now decided to consult on the option of seeking full cost recovery.
14. The following three options are considered in this IA:

- **Option 0: Do nothing.** Maintain the current fee charging structures and exemptions in the IAC.
 - **Option 1: Increase existing fees to full cost recovery levels for the FTT.** Under this option fees would increase from £80 to £490 for paper considerations and from £140 to £800 for oral hearings and the exemptions scheme would be extended to include who are in receipt of a Home Office destitution waiver in respect of their initial visa application fee.
 - **Option 2: Introduce fees at full cost recovery levels for the First Tier Permission to Appeal in the FTT and Upper Tribunal Permission to Appeal and Upper Tribunal Appeal stages in the UT.** Under this option fees would be introduced at £455 at the FTPA stage, £350 at the UTPA stage and £510 at the UTA stage and the exemptions that exist in the FTT would be extended to cover the UT.
 - **Option 3: Option 1 and Option 2 combined.**
15. The Government's preferred approach is to implement option 3 as it best meets the policy objectives.

E. Costs and Benefits

16. This IA identifies both monetised and non-monetised impacts on individuals, groups and businesses in the UK, with the aim of understanding what the overall impact on society might be from implementing the proposed option. The costs and benefits of each proposal are compared to Option 0, the Do Nothing case, where the fees are maintained at their current level.

Key data sources

17. The assessment of costs and benefits in this IA is based on the following key sources of evidence:
- Internal management information provided by HMCTS, which comprises of data on administrative and judicial timings, the number of fee exemptions and remissions and volumes for each case type; and
 - HMCTS finance data which outlines income and expenditure across the tribunals for each financial year.
 - Internal management information provided by the Home Office, which comprises of data on the number of individuals who applied for, are successful in obtaining, and went on to lodge an appeal with a Home Office destitution waiver.
18. Since the consultation launched, we have, where possible updated our estimates based on 2015-16 data. If we were to re-calculate the unit costs, and subsequently the fee levels to represent full cost recovery then, following the methodology set out below, there would be some slight variance from the fees proposed in the consultation. The extent of any variance would, however, be very small and is well within the range of ordinary year to year changes in volumes and costs. Therefore, we propose to proceed with the fee levels as consulted on, calculated against the 2014-15 data.

Methodology

19. We used the above data to model unit costs for five different case types using the assumptions and methodology described below. The five different case types are listed below, but described in more detail in Section A above:
- FTA application for a hearing on papers;
 - FTA application for an oral hearing;
 - FTPA;
 - UTPA; and
 - UTA.

20. In establishing the appropriate fees for the different case types we first mapped the cost of staff salaries, judicial salaries, lay member costs, interpreter costs and other fixed costs and support costs to five cost drivers – administrative timings, judicial timings, lay member timings, interpreter timings and case starts.
21. We also assigned the average resource spent on each case type to the five case types shown in paragraph 19. This was broken down by the five cost drivers described in the previous paragraph. The number of hours spent per case type was then multiplied by the volume of cases to calculate the total time spent on each case type.
22. From this we divided the total cost of each cost driver by the total resource spent to work out a unit cost per hour for each cost driver. These unit costs were then multiplied by the number of hours spent on each case type to work out the total unit cost of each which are shown in Table 1. These total unit costs are the fees we propose to implement.

Table 1: Total Unit Cost and Proposed Fee Level⁴

| Stage | Unit Cost/ Fee |
|-------------|----------------|
| FTA - Oral | £800 |
| FTA - Paper | £490 |
| FTP A | £455 |
| UTPA | £350 |
| UTA | £510 |

23. The fees in Table 1 have been set to recover the full cost of the Tribunals, assuming caseload remains the same as in 2014-15. Whilst the intention is to recover at cost, we recognise that these policies may lead to a reduction in appeals at each stage in the appeals process (see paragraphs 35 to 44) and therefore may lead to less than full recovery across the Tribunals.

Refunds

24. Fee refunds are available in limited circumstances in the FTT, however, the Government did indicate in the July 2015 consultation⁵ that it intended to clarify the refunds policy alongside changes to fees and exemptions. For simplicity, in this IA we have assumed that there are no refunds of tribunal fees.

Remissions and Exemptions

25. The FTT offers a fee remissions and exemptions scheme that is separate from the HMCTS fee remissions scheme used for other jurisdictions. Appellants can be exempted from a fee if they are appealing certain types of decision such as an appeal against a deprivation of citizenship decision. Alternatively, they may be entitled to a remission if, for example, they are on asylum support or receiving support from a local authority under section 17 of the Children's Act 1989. The Lord Chancellor also has a power to remit or reduce fees where he is satisfied that there are exceptional circumstances that justify doing so.
26. The fees presented in Table 1 are designed to cover the full cost of the FTT and UT in 2014-15, including income from those appellants who are eligible for remissions and exemptions. However, the figures presented in the rest of this IA are net of remissions and exemptions, and so do not necessarily correspond to the income levels required for full cost recovery.
27. Table 2 has been updated with 2015-16 data and shows the total volume of applications, the total number of remission and exemptions and the total number of people who paid a full fee at each stage in the IAC.

⁴ Unit costs and proposed fees are rounded to the nearest £5.

⁵ *The Government response to consultation on enhanced fees for divorce proceedings, possession claims, and general applications in civil proceedings and Consultation on further fees proposals*

Table 2: Case volumes at each stage in the IAC, excluding Home Office destitution waivers

| Stage | Total applications | Total remitted and exempted ⁶ | Total who paid full fee | Other ⁷ |
|-------------|--------------------|--|-------------------------|--------------------|
| FTA - Oral | 68,879 | 14,797 | 48,734 | 5,348 |
| FTA - Paper | 7,978 | 200 | 6,716 | 1,062 |
| FTPA | 24,625 | 6,105 | 16,814 | 1,706 |
| UTPA | 12,040 | 3,476 | 7,775 | 789 |
| UTA | 7,964 | 2,427 | 5,005 | 532 |

28. Following the consultation, the Government intends to extend the fee exemption scheme to cover certain appeal types and appellants who we have identified as vulnerable. The exemption will include all appellants in receipt of a Home Office destitution waiver.
29. The Home Office made a decision on 12,555 applications for its destitution waiver in 2015-16. 2,896 of these applications were accepted by the Home Office whilst the other 9,659 were rejected. Of those cases where the destitution claim was accepted, the number of people who subsequently lodged an appeal was 480 (17 per cent of 2,896).
30. Those applicants who received a Home Office destitution waiver are assumed to not currently qualify for a remission or an exemption. If these applicants do currently qualify for a remission or exemption then the impact on income to HMCTS would be smaller.
31. Therefore, we assume that extending the exemptions to include the Home Office destitution waiver will mean that an additional 480 people will avoid paying fees in the IAC at the initial FTA stage.
32. In the FTA, we also assume those additional exemptions have the split between oral hearings and decisions made on the papers as currently seen for all applicants. This equates to 430 oral hearings and 50 decisions on the papers.
33. We then assume that those who receive an exemption from the Home Office waivers at the subsequent stages of the IAC (FTPA, UTPA and UTA) is equal to the proportion of all applicants which filter through the IAC. Therefore, we estimate that 154 appellants who received a Home Office destitution waiver will proceed to the FTPA, 75 proceed to the UTPA, and 50 proceed to the UTA. Table 3 below shows how the number of people paying a fee or receiving a remission changes because of the introduction of the destitution waiver.

Table 3: Case volumes at each stage in the IAC, including Home Office destitution waivers

| Stage | Total applications | Total remitted and exempted | Total who paid full fee | Other |
|-------------|--------------------|-----------------------------|-------------------------|-------|
| FTA - Oral | 68,879 | 15,228 | 48,304 | 5,348 |
| FTA - Paper | 7,978 | 250 | 6,666 | 1,062 |
| FTPA | 24,625 | 6,259 | 16,660 | 1,706 |
| UTPA | 12,040 | 3,551 | 7,700 | 789 |
| UTA | 7,964 | 2,477 | 4,956 | 532 |

34. The Government also intends to produce revised clearer guidance on the use of the Lord Chancellors power to remit or defer fees in exceptional circumstances, which will be particularly helpful for those appeals made by vulnerable people outside of the United Kingdom. In 2015-16, 297 individuals received an exceptional remission, up by 61 per cent (113) from 2014-15. We do not know whether the clearer guidance will mean an increase in the number of appellants receiving an

⁶ As no fees are charged for the FTPA, UTPA, and UTA stages the volume remitted and exempted is estimated using the remission and exemption rate for the FTA stage.

⁷ Other includes those who received a partial remission, unknown cases and cases closed without a fee being paid.

exceptional remission and so have not monetised these effects. They are, however, considered in the sensitivity analysis in Section G.

Demand

35. Tribunal volumes are based on 2015-16 HMCTS and Home Office management information data, which are shown in Table 3 above.
36. Tribunal user demand may change in response to planned fee rises, because fees will affect an individual's internal assessment of whether to bring a claim. The fee changes may mean that individuals now decide that it is not in their interest to bring a claim. This effect is known as the price elasticity of demand.
37. In the consultation IA we assumed that volumes at each stage of the tribunal would fall by between zero and 40 per cent, with a central estimate of 20 per cent. During the consultation period we have refined this analysis to reflect the fact that each stage of the appeal process may have its own elasticity of demand, and that changes in volumes at the FTA stage has an effect on later stages in the appeals process. The elasticity of demand at each stage is shown below.

FTA

38. As in the consultation IA we assume an elasticity of demand of between zero and 40 per cent, with a central estimate of 20 per cent. Our 'high scenario' assumes that user demand (behaviour) is not affected by fee increases, and is based on what happened to the volumes of appeals when fees were introduced in the IAC.
39. Our 'low scenario' scenario models a fall in demand of 40 per cent. This figure has been informed by the changes in caseloads experienced by money claims following the introduction of enhanced fees in March 2015. The percentage change used in this IA compares the average volumes for four case types⁸ in the six months prior to the fee increase with average volumes in the six months after the fee increase.

FTPA and UTPA

40. In the consultation IA we did not assume any further change to caseload to the FTPA and UTPA stages of the appeal process. However, we now assume there is an elasticity of demand at the FTPA and UTPA stages of between 0 per cent and 36 per cent, with a central estimate of 18 per cent.
41. As with Option 1, our 'high scenario' assumes there will be no change in demand at any stage following the introduction of fees at these stages of the appeals process. This is based on what happened to the volumes of appeals when fees were introduced in the FTT.
42. The 'low scenario' scenario assumes that volumes will drop by up to 36 per cent, which is based on comparing the progression of appeals in the FTT and UT (where there are currently no further fees after the FTA stage), and the progression of judicial reviews in the UT (where there are fees for further stages in the case). More detail on how this was calculated is presented in Annex C.

UTA stage

43. At the UTA stage, we continue to assume there will be no further change to caseload as a result of the introduction of fees. This is because we believe that appellants will factor in the costs of the UTA fee when deciding to lodge a permission application in the FTT and UT. This is further evidenced by the case progression of judicial reviews in the UT (see Annex C), where, even though there are further hearing fees, there is no further drop-off in cases.

⁸ The case types used are Specified Money Claims >£50,000 in the County Court, Unspecified Money Claims >£50,000 in the County Court, Specified Money Claims <£200,000 in the High Court, and Specified Money Claims >£200,000 in the High Court.

44. Table 4, below, summarises our assumptions around the elasticity of demand at each stage. The cumulative impact of these assumptions on caseload varies for each option, and is described for each option separately.

Table 4: Elasticity of demand for each stage of the appeals process

| Stage | Low | Central | High |
|-------|-----|---------|------|
| FTA | 40% | 20% | 0% |
| FTPA | 36% | 18% | 0% |
| UTPA | 35% | 18% | 0% |
| UTA | 0% | 0% | 0% |

Transitional effects

45. Following implementation of the new fee regime, there will be a transition before each option reaches a steady state. The transitional arrangements for each option are outlined below.

Option 1

46. It is assumed that Option 1 will reach its steady state after one month. This is because the fee paid at the FTA by an appellant at the IAC is linked to the date at which the Home Office make their decision on an individual's initial application. If this decision is made before the new fees are implemented, then should this individual choose to appeal to the FTT, they will pay the old, lower fees. Appellants have a maximum of 28 days to lodge an appeal to the tribunal following the Home Office decision⁹, so we assume that the FTA stage reaches its steady state one month after the new fees are implemented.

Option 2

47. For the purposes of this IA, we have assumed that the fee paid by applicants at the FTPA and UTPA stage is linked to the date their application for FTPA/ UTPA is received by the Tribunal¹⁰. Therefore, under Option 2, we do not assume there is a transition to steady state income from these two stages. However, there is a risk that appellants recognise that a fee is coming in and bring forward their application to either of these two stages in order to avoid paying a fee. The effect of this is expected to be small and is described further in Section G. However, if such a 'pull-forward' effect were to occur it could reduce income in the first year after the policy is introduced.
48. In addition, we have assumed that the fee payable for the UTA stage is linked to the date at which the appellant was successful at either the FTPA or UTPA stage. Therefore, there will be a transition period to steady state income, equal to the average amount of time it takes for HMCTS to dispose of FTPA and UTPA stages.
49. The average amount of time it takes from the date of application to the FTT to the various subsequent stages is set out below:
- Receipt of First-tier application to disposal of First-tier application = 34 weeks¹¹
 - Receipt of First-tier application to disposal of First-tier permission application = 46 weeks¹²
 - Receipt of First-tier application to disposal of Upper Tribunal permission application = 53 weeks
50. Using this data we assume the length of time taken to deal with the FTPA stage is 12 weeks (46 weeks minus 34 weeks), and the length of time taken to deal with the UTPA stage is 7 weeks (53 weeks minus 46 weeks).

⁹ 14 days for in-country appeals and 28 days for out-of-country appeals.

¹⁰ These transitional arrangements may change before the implementation of the policy.

¹¹ *Tribunal Statistics Quarterly*, January to March 2016, Table 4.1

¹² Internal HMCTS management information

51. An appeal can reach the UTA stage by being successful at either the FTPA or UTPA stage (see Annex B). In 2015-16 the proportion of appeals at the UTA stage coming directly from the FTPA stage was around 70 per cent, whereas the proportion coming from the UTPA stage was 30 per cent¹³.
52. Combining, the length of time an appeal takes at the FTPA and UTPA stages with the proportion of appeals reaching the UTA from these stages, we assume it takes on average 10 weeks¹⁴ before Option 2 reaches a steady state.

Option 3

53. Option 3 is a combination of the other options, and so also reaches its steady state after around 3 months.

Option 0: Do Nothing – Maintain the current fee structure

54. Under the Do Nothing option the proposals highlighted in Options 1-3 would not be implemented and the current fee structure will be maintained. As the Do Nothing is compared to itself the costs and benefits are necessarily zero, as is its NPV. This option is used as the baseline against which all other options are compared.
55. Under the current fees, if all applications were required to pay a fee (i.e. there was no remissions or exemptions policy), total income to HMCTS would be around £10 million. However, after the volume of fee remissions and exemptions are accounted for, total income is estimated to be just over £7m.

Option 1: Increase fees at the First Tier Appeal stage of the IAC to cost recovery levels

Costs of Option 1

Transitional costs

Transitional costs to HMCTS

56. HMCTS expects to incur costs for changes to court publications, for destroying old stock, making amendments to court IT systems and those related to court staff having to spend some time familiarising themselves with the new fees. These one-off transitional costs for HMCTS are expected to be less than **£0.1 million**.

Transitional costs to tribunal users and legal services providers

57. Familiarisation and awareness costs might also be incurred by court users and their legal services providers. These have not been monetised but are not expected to be significant.

Ongoing costs

Costs to tribunal users

58. This option only proposes to increase fees at the appeal stage of the FTT, and therefore user demand will only be affected by fee changes at this stage. Paragraph 38 shows that we assume user demand, for those who pay a fee, will fall in response to increased fees at the FTA stage of between zero per cent and 40 per cent, with a central estimate of 20 per cent. We further assume that the proportion of appellants reaching the FTPA, UTPA and UTA stages of the appeal process remains the same. Therefore, volumes of individuals who pay a fee at every stage are assumed to fall by between zero and 40 per cent. The volumes of those receiving an exemption or remission will

¹³ Based on HMCTS management information for 2015-16. There were around 2,400 appeals allowed at the UTPA stage and 5,500 allowed at the FTPA stage, and all of these went on to the UTA stage.

¹⁴ $70\% * 12 \text{ weeks} + 30\% * 7 \text{ weeks} = 10 \text{ weeks}$

remain the same. Table 5 below shows how many people we expect to go through each stage, who pay a fee.

Table 5: Fee-paying caseload at each stage of the appeals process for Option 1

| Stage | Baseline | Low | Central | High |
|-------------|----------|--------|---------|--------|
| FTA - Oral | 48,304 | 28,982 | 38,643 | 48,304 |
| FTA - Paper | 6,666 | 4,000 | 5,333 | 6,666 |
| FTPA | 16,660 | 9,996 | 13,328 | 16,660 |
| UTPA | 7,700 | 4,620 | 6,160 | 7,700 |
| UTA | 4,956 | 2,973 | 3,964 | 4,956 |

59. Multiplying the volume of claims who paid a fee shown in Table 5 by the proposed fees shown in Table 1, we estimate IAC users will pay between an additional £16 million and £31 million in year 1 and £18 million and £35 million a year in steady state.
60. Under our central assumptions, the total additional cost to users of the FTA stage of the IAC is estimated to be around £24 million in year 1 and **£26 million per annum** thereafter, compared to the base case. This figure is the net amount of extra fee income paid by tribunal users after remissions have been provided. It is assumed that around 29 per cent of fees would be remitted or exempted.
61. Tribunal fees are usually paid upfront by the claimant. Tribunal has the power to order the cost of fees to be reimbursed by the respondent where the appellant wins. Therefore, in most cases where the reforms apply, the extra costs will be met by unsuccessful appellants or by losing respondents.
62. There may, however, be a cash flow cost to successful appellants or their legal aid representatives as the higher court fees they pay are recoverable only once the case has been settled. These cash flow costs have not been monetised and are not expected to be significant.

Benefits of Option 1

Ongoing benefits

Benefits to HMCTS

63. The benefit to HMCTS is an expected increase in income of between £16 million and £31 million in year 1, with a central estimate of £24 million. In steady state this is between £18 million and £35 million a year, with a central estimate of £26 million a year.
64. If volumes fall, then there may also be a benefit to HMCTS by way of reduced running costs.

Wider benefits to society

65. Option 1 is expected to reduce the net costs of operating the FTT and, therefore, reduce the level of public subsidy required. This subsidy will fall by the total increase in fee income after remissions have been applied.

Net impact of Option 1

66. HMCTS is expected to incur transitional costs from implementing the new fee regime (estimated at less than £0.1 million). Tribunal staff, tribunal users and legal services providers are also expected to incur negligible costs from having to familiarise themselves with the new fee structure.
67. On an ongoing basis the proposals are expected to generate additional increased fee income for HMCTS of around £26 million per annum in steady state after remissions and exemptions have been applied. As the benefit to HMCTS will be offset by the additional cost to court users, **the net economic impact is estimated to be minimal.**

Option 2: Introduce fees for the First Tier Permission to Appeal, Upper Tribunal Permission to Appeal and Upper Tribunal Appeal stages of the IAC at cost recovery levels

Transitional costs

Transitional costs to HMCTS

68. HMCTS expects to incur costs for changes to court publications, for destroying old stock, making amendments to court IT systems and those related to court staff having to spend some time familiarising themselves with the new fees. These one-off transitional costs for HMCTS are expected to be between £0.5 million and £1.5 million, **with a central estimate of £1.0 million.**

Transitional costs to tribunal users and legal services providers

69. Familiarisation and awareness costs might also be incurred by court users and their legal services providers. These have not been monetised and are not expected to be substantial.

Ongoing costs

Costs to tribunal users

70. This option does not propose to increase fees at the appeal stage of the FTT (FTA stage), but does propose introducing fees of £455 for the FTPA stage, £350 for the UTPA stage and a fee of £510 for the UTA stage.
71. Because we are not proposing to increase the FTA stage fee in this option, we assume there will be no change in user demand at this stage. However, as shown in paragraphs 40 to 44 we assume user demand will fall at both the FTPA and UTPA stages by between zero per cent and 36 per cent, with a central estimate of 18 per cent. We do not assume any further fall in demand at the UTA stage. We further assume that the proportion of appeals going through each stage of the process remains the same.
72. Due to the sequential nature of the appeals process, the volume of fee-paying appeals going through the UTPA and UTA stages will be affected by two factors:
- An automatic reduction in caseload because the number of cases going through earlier stages has reduced (the 'case progression effect'); and
 - A potential further reduction in caseload because the fees at later stages may also affect user demand (the 'elasticity effect').
73. Our central estimate assumes that the number of appeals reaching the FTPA stage will reduce by 18 per cent. Since we assume the same proportion of appeals will progress from the FTPA stage to the UTPA stage then, based on the case progression effect, our central estimate also assumes there is a reduction in appeals reaching the UTPA stage of 18 per cent. In addition, our central estimate assumes a further reduction in appeals (from the elasticity effect) reaching the UTPA stage of 18 per cent fee. Therefore, we estimate the total reduction in appeals reaching the UTPA stage to be 32 per cent in the central scenario (see Table 6 for the relevant caseload reductions for our high and low scenario scenarios).
74. Appeals that reach the UTA stage can come from appeals allowed at the FTPA stage (around 70 per cent) or at the UTPA stage (around 30 per cent). We assume there is no elasticity effect for appeals reaching the UTA stage. Therefore, based on a weighted average of the case progression

effect at the FTPA and UTPA stage, we estimate that appeals at the UTA stage will reduce by between zero and 43 per cent, with a central estimate of 22 per cent¹⁵ (see Table 6).

Table 6: Percentage change in fee-paying appeals at each stage of the process for Option 2

| Stage | Low | Central | High |
|-------------|-----|---------|------|
| FTA - Oral | 0% | 0% | 0% |
| FTA - Paper | 0% | 0% | 0% |
| FTPA | 36% | 18% | 0% |
| UTPA | 58% | 32% | 0% |
| UTA | 43% | 22% | 0% |

75. Table 7 shows the volumes of fee-paying appeals we assume at each stage of the appeals process for the various scenarios.

Table 7: Fee-paying caseload at each stage of the appeals process for Option 2

| Stage | Baseline | Low | Central | High |
|-------------|----------|--------|---------|--------|
| FTA - Oral | 48,304 | 48,304 | 48,304 | 48,304 |
| FTA - Paper | 6,666 | 6,666 | 6,666 | 6,666 |
| FTPA | 16,660 | 10,718 | 13,689 | 16,660 |
| UTPA | 7,700 | 3,196 | 5,204 | 7,700 |
| UTA | 4,956 | 2,847 | 3,854 | 4,956 |

76. The fees proposed under Option 2 are estimated to cost tribunal users between £7 million and £12 million, with a central estimate of £9 million in year 1. In the steady state Option 2 is estimated to cost tribunal users between £7 million and £13 million a year, **with a central estimate of £10 million a year**. This estimate is broken down as:
- FTA – a benefit to users of around £100,000 a year in steady state as more appellants are assumed to qualify for a remission or exemption.
 - FTPA – a cost of between £5 million and £8 million a year in steady state, with a central estimate of £6 million.
 - UTPA – between £1 million and £3 million a year in steady state, with a central estimate of £2 million.
 - UTA – between £1 million and £3 million a year in steady state, with a central estimate of £2 million.
77. This figure is the net amount of extra fee income paid by tribunal users after remissions have been provided. It is assumed that around 32 per cent of fees would be remitted or exempted at the FTPA stage and 37 per cent at the UTPA and UTA stages.
78. Tribunal fees are usually paid upfront by the claimant. In the FTT the Tribunal has the power to order the cost of fees to be reimbursed by the respondent where the appellant wins. The MoJ proposes to extend this approach to the UT meaning that appellants will only normally bear the cost where they are unsuccessful.
79. However, there may be a cash flow cost to successful appellants or their legal aid representatives as the higher court fees they pay are recoverable only once the case has been settled. These cash flow costs have not been monetised.

¹⁵ This is calculated as follows: 70% of UTA appeals from FTPA * 27% reduction in FTPA appeals + 30% of UTA appeals from UTPA * 47% reduction in UTPA appeals = 33%.

Benefits of Option 2

Ongoing benefits

Benefits to HMCTS

80. The benefit to HMCTS is an expected increase in income of between £7 million and £12 million with a central estimate of £9 million in year 1 and between £7 million and £13 million a year with a central estimate of £10 million a year thereafter.
81. If volumes fall, then there may also be a benefit to HMCTS by way of reduced running costs.

Wider benefits to society

82. Option 2 is expected to reduce the net costs of operating the IAC and, therefore, reduce the level of public subsidy required. This subsidy will fall by the total increase in fee income after remissions and exemption have been applied.

Net impact of Option 2

83. HMCTS is expected to incur transitional costs from implementing the new fee regime (estimated at between £0.5 and £1.5 million). Tribunal staff, tribunal users and legal services providers are also expected to incur negligible costs from having to familiarise themselves with the new fee structure.
84. On an ongoing basis the proposals are expected to generate additional increased fee income for HMCTS of around £10 million per annum in steady state after remissions and exemptions have been applied. As the benefit to HMCTS will be offset by the additional cost to court users, **the net economic impact is estimated to be minimal.**

Option 3: Option 1 and 2 combined

Transitional costs

Transitional costs to HMCTS

85. HMCTS expects to incur costs for changes to court publications, for destroying old stock, making amendments to court IT systems and those related to court staff having to spend some time familiarising themselves with the new fees. These one-off transitional costs for HMCTS are expected to be between £0.6 million and £1.6 million, **with a central estimate of £1.1 million.**

Transitional costs to tribunal users and legal services providers

86. Familiarisation and awareness costs might also be incurred by court users and their legal services providers. These have not been monetised and are not expected to be significant.

Ongoing costs

Costs to tribunal users

87. This option proposes to implement both Option 1 and Option 2. The user demand response will therefore differ from that described for these options and, therefore, the income will differ from that which would occur if the income from Option 1 and Option 2 were added together.
88. As with Option 1, the volume of fee-paying appeals at the FTA stage is assumed to reduce by between zero and 40 per cent, with a central estimate of 20 per cent.
89. Since we assume the same proportion of appeals progress from the FTA stage to the FTPA stage we assume a case progression effect at the FTPA stage of between zero and 40 per cent, with a

central estimate of 20 per cent. In addition we assume an elasticity effect at the FTPA stage of between zero and 36 per cent, with a central estimate of 18 per cent. When combining these effects we estimate a reduction the number of fee-paying appeals reaching the FTPA stage to be between zero and 61 per cent, with a central estimate of 34 per cent (see Table 8).

- 90. At the UTPA stage we estimate the case progression effect to be between zero and 61 per cent, with a central estimate of 34 per cent (i.e. the total reduction in caseload at the FTPA stage), and we estimate the elasticity effect to be between zero and 36 per cent, with a central estimate of 18 per cent. Combining these two effects we estimate the total reduction in fee-paying appeals reaching the UTPA stage to be between zero and 75 per cent, with a central estimate of 46 per cent.
- 91. Finally, we assume there is no further elasticity effect at the UTA stage. Therefore, the impact on appeals at the UTA stage is the weighted average of the case progression effects at the FTPA and UTPA stages. As 70 per cent of cases come directly from the FTPA and 30 per cent from the UTPA stage, we estimate the reduction in appeals will be between zero and 66 per cent, with a central estimate of 38 per cent (Table 8).

Table 8: Percentage change in fee-paying caseload at each stage of the appeals process for Option 3

| Stage | Low | Central | High |
|-------------|-----|---------|------|
| FTA - Oral | 40% | 20% | 0% |
| FTA - Paper | 40% | 20% | 0% |
| FTPA | 61% | 34% | 0% |
| UTPA | 75% | 46% | 0% |
| UTA | 66% | 38% | 0% |

- 92. Table 9, below, shows the estimated volume of appeals required to pay a fee at each stage of the appeals process.

Table 9: Fee-paying caseload at each stage of the appeals process for Option 3

| Stage | Baseline | Low | Central | High |
|-------------|----------|--------|---------|--------|
| FTA - Oral | 48,304 | 28,982 | 38,643 | 48,304 |
| FTA - Paper | 6,666 | 4,000 | 5,333 | 6,666 |
| FTPA | 16,660 | 6,431 | 10,951 | 16,660 |
| UTPA | 7,700 | 1,918 | 4,164 | 7,700 |
| UTA | 4,956 | 1,708 | 3,083 | 4,956 |

- 93. The costs to tribunal users of Option 3 is:
 - between £20 million and £44 million with a central estimate of £31 million in year 1; and
 - between £22 million and £47 million a year with a central estimate of £34 million a year thereafter.
- 94. Tribunal fees are usually paid upfront by the claimant. In the FTT the Tribunal has the power to order the cost of fees to be reimbursed by the respondent where the appellant wins. The MoJ proposes to extend this approach to the UT meaning that appellants will only normally bear the cost where they are unsuccessful.
- 95. However, there may be a cash flow cost to successful appellants or their legal aid representatives as the higher court fees they pay are recoverable only once the case has been settled. These cash flow costs have not been monetised.

Benefits of Option 3

Ongoing benefits

Benefits to HMCTS

96. The benefit to HMCTS is an expected increase in income of:
- between £20 million and £44 million with a central estimate of £31 million in year 1; and
 - between £22 million and £47 million a year with a central estimate of £34 million a year thereafter.
97. If volumes fall, then there may also be a benefit to HMCTS by way of reduced running costs.

Wider benefits to society

98. Option 3 is expected to reduce the net costs of operating the IAC and, therefore, reduce the level of public subsidy required. This subsidy will fall by the total increase in fee income after remissions and exemption have been applied.

Net impact of Option 3

99. HMCTS is expected to incur transitional costs from implementing the new fee regime (estimated at between £0.6 and £1.6 million). Tribunal staff, tribunal users and legal services providers are also expected to incur negligible costs from having to familiarise themselves with the new fee structure.
100. On an ongoing basis the proposals are expected to generate additional increased fee income for HMCTS of around £34 million per annum in steady after remissions and exemptions have been applied. As the benefit to HMCTS will be offset by the additional cost to court users, **the net economic impact is estimated to be minimal.**

F. Summary of Recommendation

101. The preferred option is to implement Option 3. This is expected to deliver additional fee income to HMCTS of between £22 million and £47 million a year in steady state. Under the central scenario the preferred option is expected to generate additional fee income to HMCTS of around **£34 million per annum in steady state**. This figure will be offset by costs to appellants of the same amount.

G. Sensitivity Analysis

Elasticity of demand impact for preferred option (Option 3)

102. As discussed in Section E above, the demand for FTT and UT services may fall when fees are introduced or existing fees are raised. If demand were to change, the expected income from the proposals would be affected.
103. To assess this risk, we have modelled a high scenario, low scenario and central estimate. The assumed percentage reduction in caseload for Option 3 is shown in Table 8. These scenarios have been applied to our baseline case volume figures and the results are shown in Table 10. They show the impact on estimated additional annual income from the proposed fee changes.
104. As Table 10 shows, under our central estimate, net additional income would be £34 million a year in steady state, £13 million less than if there were no change in demand. If our low scenario materialised then net additional income would be £22 million a year in steady state, a further £12 million less than for our central estimate.

Table 10: Additional net fee income in steady state under different demand scenarios¹⁶

| | Low (£m) | Central estimate (£m) | High (£m) |
|---------------------------------|-----------------|------------------------------|------------------|
| First Tier Appeal | 17.6 | 26.1 | 34.5 |
| First Tier Permission to Appeal | 2.9 | 5.0 | 7.6 |
| Upper Tier Permission to Appeal | 0.7 | 1.4 | 2.7 |
| Upper Tier Appeal | 0.9 | 1.6 | 2.5 |
| TOTAL | 22.0 | 34.1 | 47.4 |

The 'pull-forward' effect

105. In the consultation impact assessment, we provided an illustration of what could happen to caseload and income if consumers bring their case forward to avoid lodging an appeal. If there was a spike in claims, similar to that seen for money claims, followed by a trough in claims then income would have been around £2 million lower in the first year, following the implementation of the new fee regime.

106. However, we no longer believe that there will be any significant spike in caseloads in the period just before fees are introduced for the following reasons:

- appellants to the IAC only have a maximum of 28 days to lodge their appeal. Therefore, there is only an opportunity for a maximum of one month's worth of cases to be brought forward; and
- the cost of the appeal process is unlikely to play a significant role in individuals' decision to apply to the Home Office for leave to remain/ leave to enter the UK. We believe individuals would not apply to the Home Office with the expectation that their application will be rejected, and therefore may not place as much significance on the increased appeal fees.

107. There is a risk, due to the transitional arrangements discussed in Section E that appellants may bring forward the applications for permission to appeal at both the FTPA and UTPA stage. The maximum amount of time appellants have to lodge a FTPA is 28 days after they are provided with written reasons of the FTA decision, and to lodge a UTPA is one month after they receive the FTPA decision. Therefore, if all eligible claimants were to bring forward their claims by one month then income may be around £1 million lower than if there was no pull-forward of claims¹⁷. However, it is probably unlikely that all of these appellants are able to bring forward their claims, and therefore the impact is likely to be smaller than this.

Switching from oral to paper cases

108. The increase in fees at the appeal stage of the FTT increases the fee differential between appellants paying the fee for a consideration on the papers and appellants paying the fee for an oral hearing. Currently this is £60¹⁸, but under the preferred option it increases to £310¹⁹. This may cause appellants, who previously would have lodged an appeal to have an oral hearing, to now ask for a consideration on the papers.

109. The effect of individuals switching from oral hearings to paper considerations is to reduce income to HMCTS. Table 11 below shows this effect. Assuming the reduction in appeals at the FTA stage is 20 per cent (our central estimate in Section E), then, for every 10 percentage point increase in appeals switching from oral to paper hearings, income to HMCTS falls by around £1.2 million.

¹⁶ Figures may not sum due to rounding.

¹⁷ We estimate 16,657 First-tier permission to appeal applications (1,388 a month) and 7,698 Upper Tribunal permission to appeal applications (642 a month) pay a fee in 2015-16. Therefore, maximum lost income from a pull forward in cases = 1,388 * £455 + 642 * £350 = £0.8 million.

¹⁸ £80 for a paper consideration and £140 for an oral hearing

¹⁹ £490 for a paper consideration and £800 for an oral hearing

Table 11: Additional net fee income in steady state under different demand scenarios

| Percentage of fee-paying oral appeals that switch to paper | Total income from paper cases (£m) | Total income from oral cases (£m) | Total income (£m) | Additional income (£m) |
|--|------------------------------------|-----------------------------------|-------------------|------------------------|
| 0 per cent | 2.5 | 30.9 | 33.4 | 26.0 |
| 10 per cent | 4.4 | 27.8 | 32.2 | 24.8 |
| 20 per cent | 6.3 | 24.7 | 31.0 | 23.6 |
| 30 per cent | 8.1 | 21.6 | 29.8 | 22.4 |

Increase in remissions granted under the Lord Chancellor's power

110. The Government also proposes to produce revised clearer guidance on the use of the Lord Chancellors power to remit or defer fees in exceptional circumstances. In 2015-16, 297 individuals received an exceptional remission. Of these 290 (98%) were for oral applications, and 7 were for paper considerations.
111. We do not know whether this revised guidance will mean that more appellants will make an application for and be granted an exceptional remission, however, if the number of exceptional remissions granted doubled then this would reduce income to HMCTS by £0.2m a year.

H. Enforcement and Implementation

112. All fees are payable in advance of the service being provided. The sanction for non-payment is that the service, where appropriate, will not be provided and the case would not be permitted to proceed. This would continue to apply under the options being considered.

I. Monitoring and Evaluation

113. The MoJ continuously monitors the impact of all fee changes both in terms of the impact on case volumes and in respect of their success in generating the anticipated levels of income.

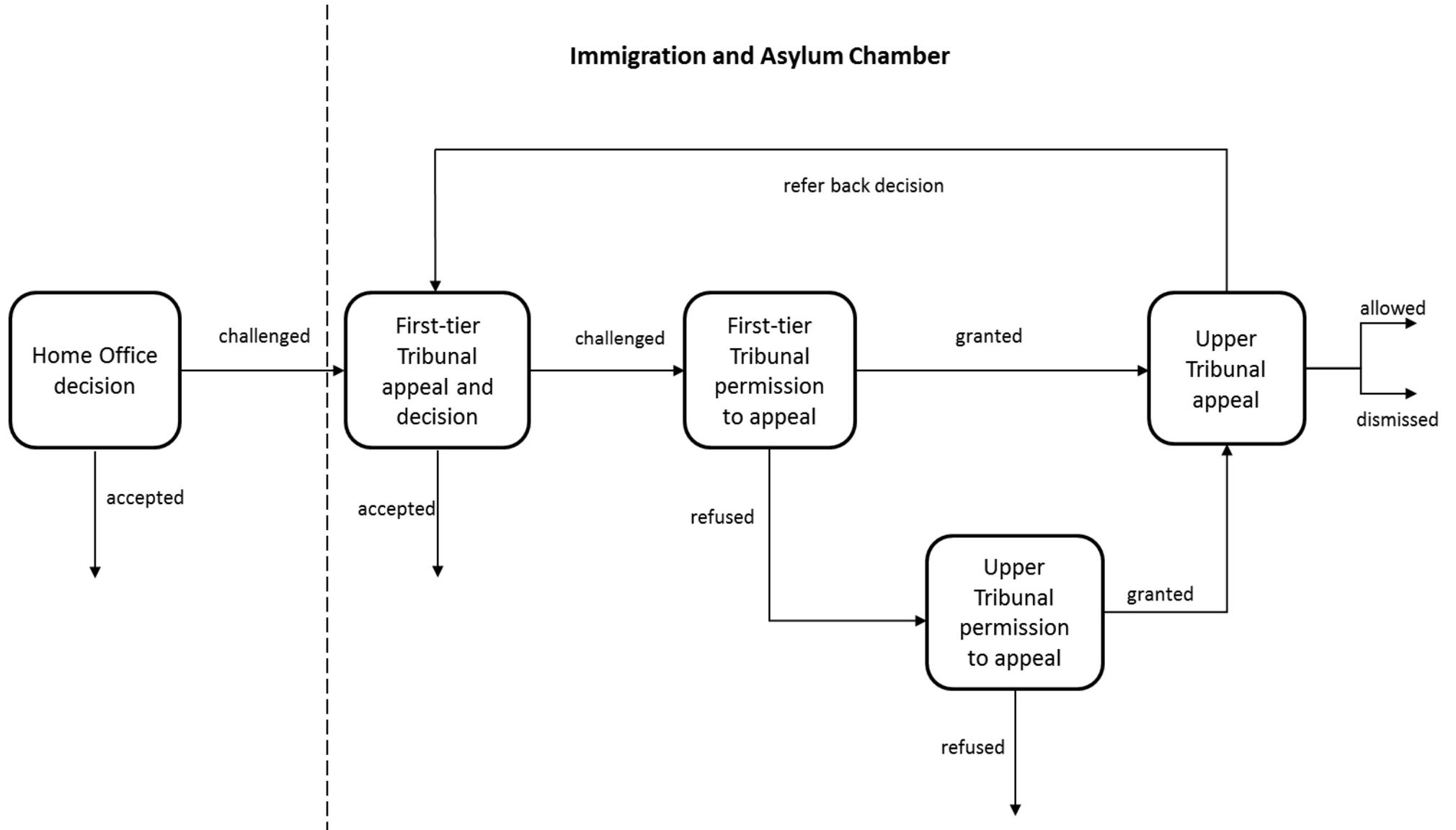
J. One In Three Out

114. The Regulatory Framework Group has considered these proposals and decided that they do not constitute regulation.

Annex A: Glossary of terms

- **IAC** – Immigration and Asylum Chamber
- **FTT** – First-tier Tribunal of the Immigration and Asylum Chamber
- **UT** – Upper Tribunal of the Immigration and Asylum Chamber
- **FTA** – First-tier Tribunal appeal
- **FTPA** – First-tier Tribunal permission to appeal
- **UTPA** – Upper Tribunal permission to appeal
- **UTA** – Upper Tribunal appeal
- **HMCTS** – Her Majesty's Court and Tribunals Service
- **IA** – Impact assessment

Annex B: Immigration and Asylum Chamber process map



Annex C: Elasticity of demand assumptions

- i. As set out in paragraphs 35 to 44 above we have revised our assumptions for user behaviour in response to the increases in fees at the FTPA, UTPA and UTA stages of the appeal process. To predict the effect of introducing fees at these stages we have compared the case progression for appeals currently seen in the FTT and UT (where there are no further fees after the first fee), with the case progression of judicial reviews in the UT, which does have further fees at both the oral renewal stage and hearing stage of the case. We have chosen to look at judicial review cases in the UT because (a) the stages a case goes through is similar to the stages in the FTT and UT; and (b) the individuals using the two different systems will likely have similar characteristics.
- ii. This information is based on 2015-16 MI from HMCTS. The MI does not break down appeals to each individual case and therefore the analysis of case progression is not based on the same sample of appeals at each stage. This may mean that some of the statistics presented below differ from the actual progression of cases.

Current FTT and UT case progression¹

- iii. In 2015-16 there were around 24,600 permission to appeal applications lodged in the FTT, and, of those which were decided, around 74 per cent (15,700) were refused. These appeals may then be eligible to apply for permission to appeal in the UT (see Annex B). The remainder, around 26 per cent (5,500), will proceed to the appeal stage of the UT.
- iv. Over the same time period, there were around 12,000 permission to appeal applications lodged in the UT, which is around 77 per cent of permission to appeal applications disposed of in the FTT. Therefore, we assume there is a baseline drop-off in volumes between the FTPA and UTPA stage of 23 per cent. Of the cases disposed of at the UTPA stage, around 2,400 were accepted and eligible to proceed to the UT.
- v. Finally, around 8,000 appeals lodged at the UTA stage in 2015-16, where permission to appeal was granted by either the FTT or UT. This indicates that there is currently no drop-off in volumes between appeals accepted at the FTPA and UTPA stages and appeals reaching the UTA stage. Of those appeals reaching the UTA stage, around 70 per cent went through the FTPA stage only, whereas 30 per cent went through both the FTPA and UTPA stage.

Current UT judicial review case progression

- vi. The current judicial review process has three main stages: permission, renewal and hearing. All cases go through the permission stage, and if they are allowed will proceed straight to the hearing stage. Cases that are dismissed or refused at the permission stage have to go through the renewal stage (unless they are dismissed as totally without merit), and be allowed, if they want to proceed to a hearing.
- vii. The fees charged in 2015-16 were £140 at the permission stage, £350 at the renewal stage and £700 at the hearing stage².
- viii. In 2015-16 around 15,700 cases reached the permission stage, and, of those which were disposed (around 14,600), around 95 per cent (13,800) were dismissed/ refused³. Of those that were dismissed or refused around 6,300 were dismissed as totally without merit, and therefore the remainder, around 7,500 cases are eligible to go through to the oral renewal stage⁴. The remainder, around 700 cases, proceed to the hearing stage.

¹ These figures are based on HMCTS internal management information

² These fees increased by 10 per cent under the Civil Proceedings, First-tier Tribunal, Upper Tribunal, and Employment Tribunal Fees (Amendment) Order 2016.

³ Tribunals and gender recognition certificate statistics quarterly: January to March 2016

⁴ In order to provide as close a counterfactual case progression we exclude cases dismissed as totally without merit as this process does not exist for IAC appeals.

- ix. Over the same time period there were around 3,200 renewal applications⁵, which is around 42 per cent of cases rejected at the permission stage. Therefore, we assume there is a baseline drop-off in volumes between the permission and renewal stage of around 58 per cent.
- x. Of the cases disposed at the renewal stage (2,058), 23% (around 500) were allowed and proceeded to the hearing stage⁶. Combining this with the number of cases allowed at permission stage (around 700), there were around 1,200 cases reaching the hearing stage. There was no further drop-off in volumes from those eligible to pay the hearing fee from there being a fee in place.

Elasticity assumptions for FTPA, UTPA and UTA

- xi. Based on the case progression of the two different routes (one with ongoing fees and one without), it seems that there is a much higher drop-out of cases between the permission and renewal stage of UT judicial review cases than between stages in the FTT and UT – around 35 percentage points difference.
- xii. Our ‘low scenario’ scenario assumes that this difference in case progression is entirely attributable to fees, and therefore we assume that the introduction of fees will reduce demand at both the FTPA and UTPA stage by 36 per cent. Our ‘high scenario’ assumes there is no change in caseloads, and our central estimate is the mid-point of our ‘low scenario’ and ‘high scenario’ (i.e. 18 per cent).
- xiii. There is, however, no difference between the drop-out of cases allowed at both the permission and renewal stage and the appeal stage of UT judicial review cases; and appeals allowed at both the FTPA and UTPA stages and appeals reaching the UTA stage of the FTT and UT. Therefore, we assume there is no further reduction of cases at the UTA stage for both our ‘high scenario’, ‘low scenario’ and central estimate.

⁵ HMCTS internal management information

⁶ Tribunals and gender recognition certificate statistics quarterly: January to March 2016

Annex D: 5 year forecast of HMCTS income

Table D1: Additional HMCTS income over 5 years, central estimate (£m)

| | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 |
|----------|---------------|---------------|---------------|---------------|---------------|
| Option 1 | 24 | 26 | 26 | 26 | 26 |
| Option 2 | 9 | 10 | 10 | 10 | 10 |
| Option 3 | 31 | 34 | 34 | 34 | 34 |

Table D2: Additional HMCTS income over time, high scenario (£m)

| | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 |
|----------|---------------|---------------|---------------|---------------|---------------|
| Option 1 | 32 | 35 | 35 | 35 | 35 |
| Option 2 | 12 | 13 | 13 | 13 | 13 |
| Option 3 | 44 | 47 | 47 | 47 | 47 |

Table D3: Additional HMCTS income over time, low scenario (£m)

| | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 |
|----------|---------------|---------------|---------------|---------------|---------------|
| Option 1 | 16 | 18 | 18 | 18 | 18 |
| Option 2 | 7 | 7 | 7 | 7 | 7 |
| Option 3 | 20 | 22 | 22 | 22 | 22 |