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|--|---|--|--|
| Title: Judicial Review: Engagement Exercise IA No: MoJ 184 Lead department or agency: Ministry of Justice Other departments or agencies: NA | Impact Assessment (IA) | | |
| | Date: 06/12/2012 | | |
| | Stage: Development | | |
| | Source of intervention: Domestic | | |
| | Type of measure: Court Rules | | |
| | Contact for enquiries: James Martin, 02033345022 | | |

| | |
|--|------------------------|
| Summary: Intervention and Options | RPC Opinion: NA |
|--|------------------------|

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|--|
| Cost of Preferred (or more likely) Option |
|--|

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

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

There has been a significant growth in the use of Judicial Review (JR) to challenge decisions of public bodies, however only a small proportion of applications get to a full hearing as many applications fail the test for permission to proceed. There are concerns at the length of time these proceedings take and the delays they can cause to the implementation of the government decision at stake. This can come at a cost to public finances, from both the burden of defending the legal proceedings and the additional costs or delaying or reduction in benefits, to both government and society as a whole, that result from implementation delays. Government intervention is necessary as the proposals require inviting the Civil Procedure Committee to make changes to the Civil Procedure Rules.

What are the policy objectives and the intended effects?

The policy objective behind the proposals is to provide a more balanced and proportionate approach to JR. The intended effect is to ensure that weak or frivolous cases which stand little prospect of success are identified and dealt with promptly at an early stage in proceedings, and that legitimate claims are brought quickly and efficiently to a resolution. This should ensure that the right balance is struck between reducing the burdens on public services and protecting access to justice and the rule of law.

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

This Impact Assessment compares the following options against the base case of doing nothing (Option 0):

- Option 1: Introduce shorter time limits on applications for a JR in two specific categories. This would require claims for JR in procurement cases to be brought within 30 days and claims in planning cases within six weeks, rather than three months. The proposal would also clarify the point at which the time limit for bringing JR proceedings starts to run.
- Option 2: Remove the right to apply for an "oral renewal" of an application for permission to bring JR proceedings. Where permission has been refused on the papers, and a claim is assessed as "totally without merit" and/or the claim has already had a prior judicial hearing earlier in the process, the right to an oral renewal would be removed. The two variants of this proposal, Option 2A and 2B, are not mutually exclusive.
- Option 3: Introduce a fee for an oral renewal hearing. This fee would be set at the same level as the fee for a full JR hearing - currently £215, although potentially increasing to £235 as consulted on in November 2011.¹
- Option 4: Introduce Options 1-3, which may include both Options 2A and 2B. This is the favoured option as it best meets the policy objectives.

Will the policy be reviewed? It will/will not be reviewed. If applicable, set review date: Month/Year

| | | | | | |
|--|---------------------|-----------------------|---------------------|----------------------|---------------------|
| Does implementation go beyond minimum EU requirements? | | | No | | |
| Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base. | Micro Yes | < 20 Yes | Small Yes | Medium Yes | Large Yes |
| What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent) | | | Traded: | | Non-traded: |

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

¹ Fees in the High Court and Court of Appeal, Ministry of Justice, November 2011.

Signed by the responsible SELECT SIGNATORY: _____

Date: 11/12/12

Summary: Analysis & Evidence**Policy Option 1**

Description: Shorten the time limits in bringing a claim in procurement and planning cases

FULL ECONOMIC ASSESSMENT

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

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

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

It has not been possible to monetise the aggregate benefits accurately as it is not known what volume of applications are not made within the proposed new time limits.

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

Claimants may lose from cases being resolved more quickly if they would have benefited from delays in making a JR application.

| BENEFITS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) |
|---------------|---|--|-------------------------------|
| Low | Optional | Optional | Optional |
| High | Optional | Optional | Optional |
| Best Estimate | | | |

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

It has not been possible to monetise the aggregate benefits accurately as it is not known what volume of applications are not made within the proposed new time limits.

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

Some claimants, defendants and third parties might benefit if a decision on their JR application is reached more quickly and they achieve the same outcome earlier with the same amount of resource. There could be wider benefits from reduced delays in the implementation of government decisions, which may support economic growth and recovery.

Key assumptions/sensitivities/risks

Discount rate (%)

It has been assumed that there will be no impact on the volume of cases brought by claimants, as the time limits are assumed not to have an impact upon the volume of applications for JR but only upon when they are made. It has been assumed that no extra resources would be required to bring cases more quickly and the outcome of JR proceedings would remain unchanged, including at the pre-action stage. There is a risk that case volumes might be higher if pre-action engagement is less successful in future if less time is available, and conversely a risk that case volumes might be lower if there is insufficient time for claimants to apply for JRs in future. There is a risk of increased costs to claimants and defendants associated with preparing cases more quickly, generating associated increased levels of business for legal services providers, and conversely a risk that cases might be prepared in less depth in future, with the opposite implication for legal services providers. There is a risk that claimants might apply for more extensions to the time limit in future. There is a risk that claimants may incur increased costs of monitoring Government decisions and a risk that public bodies may devote more resources into clarifying decision making processes.

BUSINESS ASSESSMENT (Option 1)

| Direct impact on business (Equivalent Annual) £m: | | | In scope of OIOO? | Measure qualifies as |
|---|-----------|------|-------------------|----------------------|
| Costs: | Benefits: | Net: | No | IN/OUT/Zero net cost |

Summary: Analysis & Evidence

Policy Option 2

Description: Limit opportunities for oral reconsideration of application for permission

FULL ECONOMIC ASSESSMENT

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

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

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

It has not been possible to monetise the aggregate costs accurately as the number of oral renewals which would be affected by the proposals is not known with certainty.

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

Some claimants may have fewer opportunities to put forward their case in future, i.e. to make an oral renewal. Businesses/individuals may lose out from cases being finalised more quickly if they would benefit indirectly from delays in the JR process. As a second round impact, legal services providers may secure less income from reduced numbers of oral renewals.

| BENEFITS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) |
|---------------|---|--|-------------------------------|
| Low | Optional | Optional | Optional |
| High | Optional | Optional | Optional |
| Best Estimate | | | |

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

It has not been possible to monetise the aggregate benefits accurately as the number of oral renewals which are affected by the proposals is not known with certainty.

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

HMCTS and some claimants and defendants may experience resource savings from a reduction in oral renewals. As a second round impact, legal services providers may devote saved resources to other profitable activity. Any resource savings for HMCTS would allow administrative and judicial time to be devoted to other matters, rather than generating financial savings. There could be wider benefits from reduced delays and uncertainties in the implementation of government decisions, which may support economic growth and recovery.

Key assumptions/sensitivities/risks

Discount rate (%)

It has been assumed that the proposals would reduce the volumes of oral renewals but that the eventual outcomes of the JR process would be the same, i.e. oral renewals which are no longer heard would not have been successful. There is a risk that fewer opportunities for claimants to apply for oral renewals may encourage them to devote additional resources to their initial application for permission to proceed with a JR, which may offset resource savings to them from the reduction in oral renewals. There is a risk that in turn this may require defendants to devote more resource to initial stages of the JR process. If more resources shift to the initial stages then any potential impact on legal services providers might be diminished. It has been assumed that there would be no increase in appeals to the Court of Appeal (CoA) but there is a potential risk of increased CoA applications.

BUSINESS ASSESSMENT (Option 2)

| | | | | |
|---|-----------|------|-------------------|----------------------|
| Direct impact on business (Equivalent Annual) £m: | | | In scope of OIOO? | Measure qualifies as |
| Costs: | Benefits: | Net: | No | IN/OUT/Zero net cost |

Summary: Analysis & Evidence

Policy Option 3

Description: Introduce a new fee payable when an application is made for an oral renewal of a JR application

FULL ECONOMIC ASSESSMENT

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

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

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

Under this proposal, a claimant seeking an oral renewal would be required to pay an additional court fee of £215 (potentially rising to £235) in the future, which would in effect be waived if the oral renewal is successful. In 2011 around 1,700 unsuccessful oral renewals were dealt with. Assuming a fee of £235, the maximum cost to claimants would be around £0.4m. In practice, the figure is likely to be lower than this, as this figure does not capture the potential impact of fee remissions. Within this total the maximum possible cost to business and voluntary bodies is around £120,000.

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

There may be costs to HMCTS from processing the new oral renewal fee. The new oral renewal fee may generate increased costs for the Legal Services Commission (LSC) if the party bringing the claim is legally aided and if their oral renewal is unsuccessful, although this would represent a transfer between the LSC and HMCTS.

| BENEFITS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) |
|---------------|---|--|-------------------------------|
| Low | Optional | Optional | Optional |
| High | Optional | Optional | Optional |
| Best Estimate | | | |

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

The maximum potential benefit to HMCTS would be around £0.4m, mirroring the maximum potential increased cost to claimants. This would reflect a benefit to HMCTS in moving towards cost recovery..

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

No direct non-monetised benefits have been identified.

Key assumptions/sensitivities/risks

Discount rate (%)

This proposal relates primarily to securing improved court cost recovery rather than to directly impacting behaviours and as such no reduction in oral renewal volumes has been assumed. There is a risk that, as a secondary impact, there might be a marginal reduction in oral renewal volumes in future. Any consequential reduced demand for legal services would enable legal services providers to devote resources which would have been used on oral renewals to other profitable activity. It has been assumed that any reduced volume of oral renewals would relate to those which would not have succeeded. If there were any reduction in oral renewal volumes this would reduce delays in implementing government decisions. Because the new oral renewal fee is not expected to completely cover all court oral renewal costs, and hence leave oral renewals subject to some continued subsidisation, any reduction in oral renewal volumes would generate net savings for HMCTS, which are assumed to be used on other matters to the benefit of court processing and waiting times.

BUSINESS ASSESSMENT (Option 3)

| | | | | |
|---|-----------|------|-------------------|----------------------|
| Direct impact on business (Equivalent Annual) £m: | | | In scope of OIOO? | Measure qualifies as |
| Costs: | Benefits: | Net: | No | IN/OUT/Zero net cost |

Summary: Analysis & Evidence

Policy Option 4

Description: Implement Options 1 to 3

FULL ECONOMIC ASSESSMENT

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

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

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

The new oral renewal fee may cost claimants a maximum of around £0.4m in total, of which a maximum of around £0.12m might apply to businesses and voluntary bodies. In practice these figures are likely to be lower than this as they do not capture the potential impact of fee remissions nor of the potential reduction in oral renewal volumes associated with proposals relating to applications for oral renewals.

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

There may be transitional costs from familiarisation and any satellite litigation to determine how the new provisions work. Legal aid costs may rise with the introduction of the oral renewal fee, which would represent a transfer between the LSC and HMCTS. Businesses and individuals may lose out from cases being resolved more quickly if they would benefit indirectly from delays in the JR process. HMCTS may incur costs from collecting the new oral renewal fee and from applying fee remissions. As a second round impact, legal services providers may lose out from reduced levels of business associated with reduced volumes of oral renewals.

| BENEFITS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) |
|---------------|---|--|-------------------------------|
| Low | Optional | Optional | Optional |
| High | Optional | Optional | Optional |
| Best Estimate | | | |

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

The maximum potential benefit to HMCTS from increased fee income would be under £0.4m, mirroring the maximum potential increased cost to claimants. This would constitute a move towards increased court cost recovery for oral renewals.

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

Some claimants (who win their cases) may benefit from the quicker resolution of their case. Defendants and third parties may also benefit from reduced delays and uncertainties in the implementation of government decisions. These benefits may relate to infrastructure and other projects which may support economic growth and recovery. Claimants may save legal services costs from making fewer oral renewals. Legal services providers may devote the resources they would have used on such oral renewals on other profitable activity. A reduction in oral renewal volumes would generate net operational cost savings for HMCTS, which may be used on other matters to the benefit of court processing and waiting times.

Key assumptions/sensitivities/risks

All assumptions and risks outlined in earlier sections apply.

Discount rate (%)

BUSINESS ASSESSMENT (Option 4)

| | | | | |
|---|-----------|------|-------------------|----------------------|
| Direct impact on business (Equivalent Annual) £m: | | | In scope of OIOO? | Measure qualifies as |
| Costs: | Benefits: | Net: | No | IN/OUT/Zero net cost |

Evidence Base (for summary sheets)

1. Introduction

1.1 Background

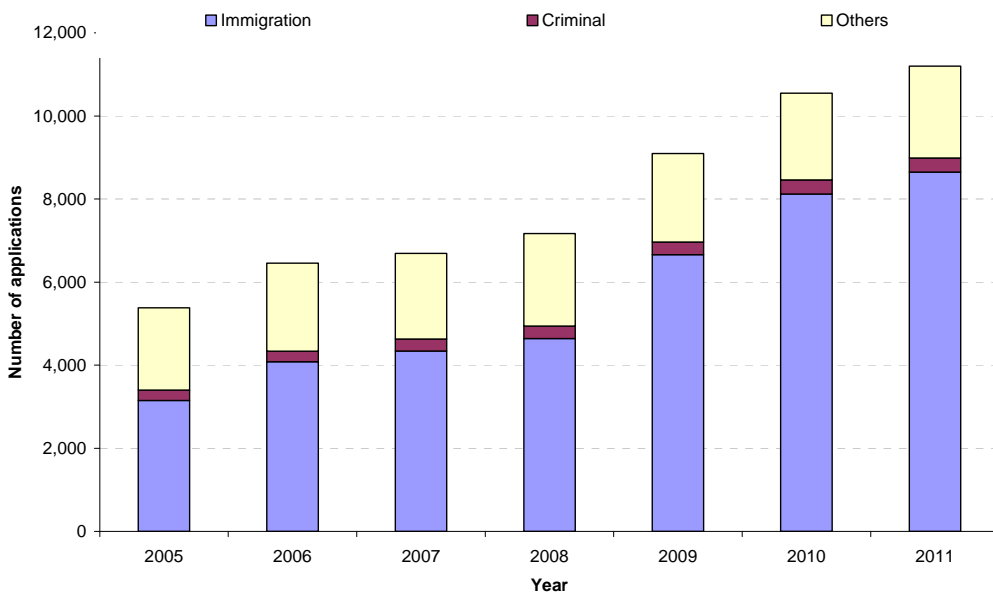
- 1.1 Judicial Review (JR) is a process by which individuals, businesses and other affected parties can challenge the lawfulness of decisions or actions of the Executive, including those of Ministers, local authorities, other public bodies and those exercising public functions. It is largely a judge-developed procedure and can be characterised as the rule of law in action, providing a key mechanism for individuals to hold the Executive to account.
- 1.2 There are three main grounds on which a decision or action may be challenged:
 - Illegality: for example, it was not taken in accordance with the law that regulates it or goes beyond the powers of the body;
 - Irrationality: for example that it was not taken reasonably, or that no reasonable person could have taken it; and
 - Procedural irregularity: for example, a failure to consult properly or to act in accordance with natural justice or with the underpinning procedural rules.
- 1.3 JR proceedings are governed by section 31 of the Senior Courts Act 1981 and the procedure is set down in the Civil Procedure Rules, and in particular Part 54 (and accompanying Practice Directions). They are generally heard in the Administrative Court, which forms part of the Queen's Bench Division of the High Court. Usually, they are heard by a High Court Judge, but on occasion may be heard by the Divisional Court (comprising two judges).
- 1.4 JR proceedings must be commenced by filing at Court a claim form, setting out the matter the claimant wants the Court to decide, or the remedy sought. The claim must be submitted promptly and in any event within three months. The claim form must be served on the defendant, and any other interested party (unless the Court directs otherwise) within seven days of issue. If the other parties wish to take part in the proceedings, they are required to file an acknowledgement of service within 21 days of the service on them of the claim form.
- 1.5 The Court's permission is required for a claim for JR to proceed. Decisions on permission are normally considered on a review of the papers filed. Permission may be granted in full, or limited to certain grounds set out in the claim. Where permission is granted, the Court may make directions for the conduct and management of the case.
- 1.6 In cases where the Court refuses permission (either in full or in part), it will set out the reasons and serve them on the claimant and the other parties to proceedings. The claimant may request that the decision be reconsidered at a hearing (referred to in this Impact Assessment (IA) as an "oral renewal"). A request for an oral renewal must be filed within seven days of service of the reasons for refusing permission.
- 1.7 The oral renewal is a full reconsideration of the matter, supported by oral submissions. Where permission is granted, the claim will continue as normal. Where it is refused, the claimant may consider whether he or she wishes to appeal to the Court of Appeal (CoA).
- 1.8 Where permission is granted the Court may make directions for the conduct and management of the case, setting out time limits for example, for the filing and serving of the particulars of the claim, the defence to the claim and any evidence on which the parties wish to rely.
- 1.9 Matters may be expedited with the Court's permission: for example, the permission and the full hearing may be "rolled up" so that both are considered at the same hearing. The Court also has a general power to extend any time limit set out in the rules where it is in the interests of justice to do so.

1. 10 JR is concerned with the lawfulness of the decisions taken. It is not the Court’s role to substitute its own judgment for that of the decision maker. Where the Court concludes that a decision was not taken lawfully it may make one of a number of orders, such as a quashing order setting aside the original decision.

1.2 Problem under consideration

1. 11 There has been a significant growth in the use of JR to challenge the decisions of public bodies. In 1974, there were 160¹ applications for JR, by 1998 this had risen to over 4,500, and by 2011 had reached over 11,000.² The increase has mainly been the result of the increase in the number of challenges made in immigration and asylum matters as can be seen in Figure 1 below which shows the number of applications for permission for Judicial Review for immigration, criminal and other cases between 2005 and 2011.

Figure 1: Number of applications for permission for Judicial Review – 2005 to 2011³



1. 12 The data suggest that only a small number of applications per year proceed to a final hearing in that year: in 2011, there were just under 400 Judicial Review disposals following a substantive hearing. In some cases, this is because the parties have reached a settlement, and the claim has been withdrawn. In others, the case is in progress and it is, for example, awaiting a decision on permission, or is being prepared for a final hearing. We do not currently collect data centrally on these matters.

1. 13 In the majority of applications considered by the courts, permission to bring Judicial Review proceedings is refused. Of the 7,600 applications for permission considered by the Court in 2011, only around one in six (or 1,200) was granted. Of the applications which were granted permission, 300 were granted following an oral renewal (out of around 2,000 renewed applications that year).

1. 14 By the time the case reaches a substantive hearing, case outcomes are more balanced. In 2011, 396 applications for Judicial Review were disposed of, and the claimant was successful in 174 of them. Where the claimant is successful the matter might sometimes be referred back to the decision making body for further consideration in light of the Court’s judgment.

1. 15 There are also concerns at the length of time these proceedings take and the delays they cause. For example, in 2011, it took on average 11 weeks for a decision on permission to be taken on the papers,

¹ www.parliament.uk/documents/commons/lib/research/rp2006/rp06-044.pdf

² *Judicial and Court Statistics 2011*, Ministry of Justice, June 2012, Table 7.12.

³ Information is based on the Ministry of Justice published national statistics on JRs. The relevant information is included in Table 7.12 of the annual *Judicial and Court Statistics*.

and a further 21 weeks if the matter went to an oral renewal. Overall, it took around ten months on average from the initial paper application to a final decision being made.⁴

1. 16 The number of JR applications and growth in applications together with the duration of proceedings provide a backdrop to the reforms, which relate to proposed improvements to the JR process.
1. 17 The current situation has cost implications for the public finances, relating to both:
 - i. The cost associated with defending the legal proceedings, both as a defendant or interested party and for HMCTS.
 - ii. Potential costs incurred as a result of the delays in implementing decisions, or alternatively benefits foregone if the JR relates to the implementation of a new project. In certain types of case, in particular those involving large planning developments or constructions where substantial significant sums are at stake, delays can have a significant impact on the costs of the project, potentially putting the financial viability of the project at risk.
1. 18 It is not just the immediate impact of JR that is a concern. The threat of JR may also have an unduly negative affect the behaviour of decision makers. There is some concern that the fear of JR is leading public authorities to be overly cautious in the way they make decisions, making them too concerned about minimising, or eliminating, the risk of a legal challenge.
1. 19 The volume of JR applications and the delay they can cause is not only an issue for the public body making the decision. Delay affects infrastructure and other projects which may support economic growth and recovery, and affects other private and voluntary sector organisations.

1.3 Policy Objectives

1. 20 The Government is concerned that there has been significant growth in the use of JR, sometimes used as a delaying tactic, but that only a small proportion of cases stand a reasonable prospect of success. These proceedings can create delays and add to the costs of public services, in some cases potentially stifling innovation and frustrating much needed reforms, including those aimed at stimulating growth and promoting economic recovery.
1. 21 The policy objective behind the proposals is to provide for a more balanced and proportionate approach to JR. The intention is to ensure that weak or frivolous cases which stand little prospect of success are identified and dealt with promptly at an early stage in proceedings, and that legitimate claims are brought quickly and efficiently to a resolution. In this way, this should ensure that the right balance is struck between reducing the burdens on public services, and protecting access to justice and the rule of law.

⁴ Management information, Administrative Court Office

1.4 Policy Proposals

1.22 The options considered in this IA are:

Time limits within which JR proceedings must be brought

- Requiring claims for JR in procurement cases to be brought within 30 days of when the claimant knew or ought to have known of the grounds for the claim;
- Requiring claims for JR of local authority planning decisions to be brought within six weeks of when the claimant knew or ought to have known of the grounds for the claim⁵; and
- Clarifying that the time limit starts from the point at which the claimant knew, or ought reasonably to have known, of the first grounds giving rise to the claim in cases of continuing or multiple breach.

Procedure for applying for permission to bring JR proceedings

- In cases where the claimant has been refused permission on the papers, and the matter is one which has been the subject of a prior judicial hearing, the claimant's right to ask for an oral renewal of the application for permission would be removed.
- Where the Judge considers that an application is "totally without merit" and certifies it as such, the applicant would not be entitled to an oral renewal.
- These options could be implemented together, or as alternatives.

Fees charged in JR proceedings

- Introducing a new fee payable when an application is made for oral renewal. This fee would be equal to the level of the fee for the full JR hearing, currently £215 but potentially increased to £235 (this has been consulted on separately). The fee for a full Judicial Review hearing would be waived if the claimant is successful at the oral renewal hearing.

All options implemented

- This is the favoured option as it best meets the policy objectives.

1.5 Economic rationale for intervention

1.23 The conventional economic approach to government intervention to resolve a problem is based on efficiency or equity arguments. The Government may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or if there are strong enough failures in existing government interventions (e.g. waste generated by misdirected rules). In both cases the proposed new intervention itself should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and re-distributional reasons (e.g. to reallocate goods and services to the more needy groups in society).

1.24 In this case, intervention would be justified primarily on economic efficiency grounds. There would be productive efficiency gains if fewer judicial system costs and other resources were used to achieve an equivalent outcome in terms of final JR decisions.

1.25 Limiting the opportunities to make an oral renewal would reduce the volume of oral renewals of either particularly weak cases or cases that have already received a full hearing. The proposal would enable efficiency gains as it is assumed that fewer resources would be required to achieve equivalent outcomes in relation to the JR application. The number of successful cases is assumed to be unaffected based on the scope of the proposed test for permission, which would either affect very weak claims deemed to be "totally without merit", implying they would have been highly unlikely to have succeeded in the oral renewal, or those cases that have already had an oral hearing in another part of

⁵ Under the current arrangements, a three month time limit applies to all applications for JR unless a shorter limit is prescribed in statute.

the judicial system, so would already have been subject to the same level of scrutiny as an oral renewal.

- 1.26 Reducing the time limit to apply for permission to bring a JR may encourage more efficient use of resources if equivalent decisions are reached more quickly and with no additional resource required.
- 1.27 Court fee reforms which increase court cost recovery and reduce the subsidisation of court services would also constitute an increase in economic efficiency, especially as these reforms are assumed to achieve equivalent outcomes in relation to JR applications.
- 1.28 The proposed reforms might also generate wider economic benefits, including those applying to third parties. Reduced delays and uncertainties in the implementation of government decisions might benefit infrastructure projects and others which might support economic growth and recovery.

1.6 Main affected groups

- 1.29 The proposals are likely to affect the following groups:
 - i. Claimants in the High Court in England and Wales – individuals, businesses and third sector organisations
 - ii. Defendants in the High Court in England and Wales – public sector organisations/bodies
 - iii. Her Majesty's Courts and Tribunals Service (HMCTS) – administers the Administrative Court (which forms part of the High Court of Justice) in England and Wales and also the Court of Appeal (CoA).
 - iv. Legal Services Commission (LSC). The LSC is responsible for managing the legal aid fund. Claimants who are eligible for legal aid have their fees paid for them by their legal representatives, who can reclaim the money from the LSC.
 - v. Legal Service Providers
 - vi. Third Parties – business and individuals

2. Costs & Benefits

- 2.1 This Impact Assessment identifies both monetised and non-monetised impacts on individuals, groups and businesses in the UK, with the aim of understanding what the overall impact to society might be from implementing the options considered. The costs and benefits of each option are compared to the do nothing option, and a cumulative assessment is also provided. Impact Assessments place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However there are important aspects that cannot sensibly be monetised. These might include how the proposal impacts differently on particular groups of society or changes in equity and fairness, either positively or negatively.
- 2.2 This Impact Assessment considers the impacts of the proposals for changing the scope and process of applying for Judicial Review. It compares the options outlined in paragraph 1.20 against the base case of doing nothing (Option 0).
- 2.3 This Impact Assessment provides a qualitative assessment of the main costs, benefits and impacts. This is due to a lack of detailed financial information on the JR process and because there is insufficient information at this stage to anticipate the extent of potential behavioural responses.

Option 0: Base case (do nothing)

- 2.4 Under the 'do nothing' base case renewal fees, time limits and opportunities for oral renewal hearings would remain unchanged.
- 2.5 The do nothing option is compared to itself and therefore the costs and benefits are necessarily zero, as is its Net Present Value (NPV).
- 2.6 Separate possible reforms which would require primary legislation may involve asylum, immigration or nationality JR cases being considered by the Upper Tribunal in future. Any such reforms would be implemented after the reforms in this Impact Assessment and therefore they do not feature in the base case.

Option 1: Shorten the time limits in bringing a claim

Description

2.7 This Option has two elements:

- To introduce shorter time limits in bringing a claim for bringing Judicial Review proceedings in public procurement cases and planning decisions. Under the current system, a three month time limit applies to all applications for JR, whereas under the proposal the time limit would be shortened to 30 days for procurement cases and 6 weeks for planning cases. The rationale is to ensure that legitimate claims are brought quickly and efficiently to a resolution and hence that projects that may contribute to economic growth are not unnecessarily delayed. In planning cases the shorter time limits are in line with the timeframes for an appeal to be made and in procurement cases in line with a challenge under specific Regulations.
- Clarifying that the time limit on when an application for a JR can be made starts from the point at which the claimant knew, or ought reasonably to have known, of the grounds giving rise to the claim. Anecdotal evidence suggests that, at least in some cases, the claimant has been able to argue successfully that the time limit should start at a later point which means that some cases are not dealt with as early as possible in the in the JR process.

2.8 Both proposals seek to strike the right balance between reducing the burdens on public services, and protecting access to the JR process and the rule of law.

2.9 Overall it has been assumed that case volumes and outcomes will remain the same, that the same level of resources will be used as now and that cases will simply be brought more quickly.

Costs of Option 1

Transitional costs

2.10 There may be one-off familiarisation and adjustment costs to claimants, defendants and HMCTS. These are expected to be negligible. There might also be some initial satellite litigation to determine how the new provisions work.

Costs to Claimants

2.11 In procurement and planning cases, claimants would have to bring claims within 30 days and 6 weeks respectively, rather than three months under the current system. It has been assumed that there would be no additional costs from bringing cases more quickly. In 2011 there were nearly 200 JR applications relating to the court statistical category "Town and Country Planning". It is possible that there were more planning cases in other court statistical categories, however the number is expected to be low (at most in the hundreds). Likewise, with procurement cases it is hard to identify exactly how many of the roughly 11,000 JR applications are procurement-related, however, based on the information available – which suggest that the vast majority are asylum and immigration cases (around 8,500) and that only around 2,500 fall into the "Other" category – it is expected that at most there were only a few hundred procurement applications in 2011. These

proposals would only affect those claimants who do not bring claims within these timescales currently.

2.12 It has been assumed that the proposals will have no impact on the overall volume of cases brought by claimants, as the time limits are assumed not to affect applications for the JR process but only when the application is made. More detail is provided in the assumptions section below.

2.13 Claimants may lose out from cases being resolved more quickly if they would have benefited from delays in a JR application.

Costs to Defendants

2.14 No significant direct costs to defendants have been identified based on the assumptions made.

Costs to HMCTS

2.15 It has been assumed that the volume of JR cases would remain the same, however the proposals could cause some JR applications to be considered sooner compared to when they would have been heard under the current system, depending on when claimants currently bring their claims. It is unclear whether this would have case management implications for HMCTS.

Costs to Legal Services Commission

2.16 No costs to the LSC have been identified as the claimants in planning and procurement cases are usually not eligible for legal aid.

Costs to Legal Service Providers

2.17 No overall costs to legal service providers have been identified, for example in terms of reduced levels of business. In relation to those cases which are impacted by the proposals it has been assumed that the same amount of work will be required and that this will be undertaken more quickly involving no extra resources and at no additional cost.

2.18 The shorter time limits for planning and procurement cases and the limits applying to when a claim must be brought once first reasonable grounds are known may reduce the time it takes to resolve a case if cases are not currently submitted within these timeframes. Individuals and businesses may lose out if they would have benefited from delays in the JR process.

Wider Economic Costs

2.19 No significant wider economic costs have been identified.

Benefits of Option 1

Transitional benefits

2.20 No significant transitional benefits have been identified.

Benefits to Claimants

2.21 Some claimants might benefit if a decision on their JR application is reached more quickly in future. This would apply to cases where claimants win their JR, and hence where they secure the positive outcome they were seeking at an earlier point in time. This would relate to those claimants who do not currently bring their claim within the proposed time limits. As claimants already have the option to bring a claim within the proposed timescales, the extent of this potential benefit is unclear.

Benefits to Defendants

2.22 Public bodies seeking to implement planning and procurement decisions may benefit from the quicker resolution of cases. The new time limits may potentially reduce the total JR application process by up to two months for procurement cases and six weeks for planning cases, which could

have important implications for the public bodies in realising their policy objectives. The volumes of JRs relating to planning and procurement projects are relatively small but the wider benefits for public bodies may be substantial. For example, if there were delays in installing flood defences due to a JR on the awarding of the procurement contract this might leave the Government liable to cover damages stemming from the defences not being built in time.

Benefits to HMCTS

2.23 No significant benefits to HMCTS have been identified.

Benefits to Legal Services Commission

2.24 No significant benefits to the LSC have been identified as the claimants in planning and procurement cases are usually not eligible for legal aid.

Benefits to Legal Services Providers

2.25 No significant benefits to legal services providers have been identified.

Benefits to Third Parties

2.26 Individuals and businesses may benefit indirectly from the quicker resolution of some cases, in particular in relation to planning or procurement JR applications and related subsequent decisions being brought forward. These benefits may relate to infrastructure projects and others which may support economic growth and recovery.

Wider Economic Benefits

2.27 Improved economic efficiency would be implied if the same case outcomes were delivered using the same overall level of resources and if these outcomes were delivered more quickly. As mentioned above, there may be wider benefits to economic growth and recovery from these proposals.

Assumptions & Risks

2.28 It has been assumed that the overall volume of JR cases and hearings will remain the same, that eventual outcomes will remain the same and no extra resources would be required in the JR process. Each of these assumptions and the risks applying to them are discussed below.

2.29 There are a number of risks associated with the volume of cases in future. It has been assumed that pre-action engagement will lead to the same outcomes as under the current system. However, there is the risk that the volume of JR applications may increase if there is insufficient time for pre-action engagement to reach a resolution. The Court can extend time limits as part of its case management powers.

2.30 Conversely there is also a possibility that volumes may fall if claimants fail to meet the tighter deadlines. This is perhaps more likely in procurement cases where the time limits would effectively be cut by two months. However, the number of procurement cases is relatively small and the 30 day limit mirrors the general timescales for bringing appeals in these cases.

2.31 The overall impact in terms of case volumes depends on behavioural responses which are not possible to forecast. Any potential overall impact on volumes also depends on whether or not claimants currently operate within the proposed timeframes (30 days for procurement cases, six weeks for planning cases and within three months for all other cases). Furthermore, the courts have powers to permit cases to be brought after the time limit has expired where it is just and equitable to do so, allowing for extensions to facilitate effective pre-action engagement, which should mean there is not a large change in the volume of JRs.

2.32 It has been assumed that the outcomes of JR proceedings would be the same as under the current time limits.

- 2.33 The tighter deadlines for JR applications may lead to increased resource being spent by potential claimants to monitor government decisions, to enable claimants to make an application more quickly. Improved knowledge of when public bodies are making decisions might be necessary to work within the new timeframes. It is unclear how significant any such costs would be.
- 2.34 There is a risk that public bodies may have to devote more resources to clarifying decision making processes and making it clear how/when the decisions have been made to avoid the possibility of JRs being submitted due to a lack of transparency relating to when claimants may have reasonably known of the grounds giving rise to the claim. This in theory could apply to all types of cases.
- 2.35 It has been assumed that cases will be prepared in the same depth as now and that the same case outcomes will be secured, but there is a risk that reduced time might have an adverse impact on case preparation and on case outcomes. This might apply to both claimants and to defendants.
- 2.36 There is a risk that claimants may apply for more extensions to the new time limit and hence that the proposals will have a limited impact on reducing the delays in JR proceedings. Any increase in the volume of applications for extensions would require additional court resources.

Option 2: Limit opportunities for oral reconsideration

Description

- 2.37 Option 2 proposes to limit opportunities for the oral reconsideration of an application for permission to bring Judicial Review. This would take the form of Option 2A – removal of the right to an oral renewal in cases where claimants have already had a full judicial hearing - and/or Option 2B – removal of the right to an oral renewal in applications which the Judge, on written the application, has assessed as being “totally without merit”.
- 2.38 The rationale for these proposals is that the current process for considering whether a JR should proceed to court provides too many opportunities for claimants to present their case given that the applicant is successful in only a small proportion of cases.
- 2.39 Under both options, if an oral renewal is limited the claimant would have the right to request permission to appeal at the CoA. The CoA may:
- refuse permission to appeal;
 - grant leave to appeal but ultimately refuse permission; or
 - grant leave to appeal and grant permission and remit the case to the High Court to determine the substantive Judicial review.⁶
- 2.40 There are thus multiple opportunities to submit a case for permission to bring JR proceedings. However, as stated in paragraph 1.12, the majority of cases are weak and eventually refused – in 2011 only around 1 in 6 oral renewals dealt with were successful in overturning the decision on the papers and gaining permission to bring JR proceedings.
- 2.41 Overall the following analysis of costs and benefits assumes that the proposals would reduce the volume of oral renewals and that those oral renewals which no longer take place would not have been successful.

⁶ There is no onward appeal to the Supreme Court (*Re Poh* [1983] 1 WLR 2)

Costs of Option 2

Transitional costs

2.42 There may be one-off familiarisation and adjustment costs to claimants, defendants and HMCTS. These are expected to be negligible. There might also be some initial satellite litigation to determine how the new provisions work.

Costs to Claimants

2.43 Under either Option 2A or Option 2B, some claimants would have fewer opportunities to put forward their case for why permission for a JR should be granted.

2.44 Not all claimants would be directly affected by both proposals. Under Option 2A those submitting a written application where the matter has not been the subject of a prior judicial hearing would not be affected.

2.45 Anecdotal evidence suggests that Option 2B would potentially apply to a greater number of cases as the application might be dismissed without the possibility of an oral renewal hearing but only where the claim is determined as being totally without merit.

2.46 There could be costs to claimants from some cases being resolved more quickly if they would have benefitted from delays in the process.

Costs to Defendants

2.47 No significant direct costs to defendants (public bodies) have been identified.

Costs to HMCTS

2.48 No significant direct costs to HMCTS have been identified. (If a court fee for an oral renewal was in place then HMCTS would incur a loss of court fee income. Currently in the Option 0 base case no oral renewal fee exists hence this cost does not arise).

Costs to Legal Services Commission

2.49 No significant legal aid costs to the LSC have been identified.

Costs to Legal Services Providers

2.50 No direct costs to legal services providers have been identified. There may however be secondary impacts under both Options 2A and 2B in the form of reduced income from reduced levels of business resulting from a reduced volume of oral renewals.

Costs to Third Parties

2.51 Under both Options 2A and 2B, businesses and individuals may lose out from cases being resolved more quickly if they would benefit from delays in the JR process.

Wider Economic Costs

2.52 No significant wider economic costs have been identified.

Benefits of Option 2

Transitional benefits

2.53 No significant transitional benefits have been identified.

Benefits to Claimants

2.54 Claimants who previously may have applied for an oral renewal may save resources if they are unable to do so in future. It has also been assumed that oral renewals which are no longer heard would have been unsuccessful, and therefore for these claimants there could be a resource saving whilst final outcomes would remain the same.

Benefits to Defendants

2.55 Defendants (public bodies) might save resources as a result of there being fewer oral renewals.

2.56 There could also be benefits to defendants from reduced delays and uncertainties relating to the implementation of decisions, if these delays and uncertainties generate wider costs for public bodies. Such costs could relate to projects which support economic growth and recovery.

Benefits to HMCTS

2.57 There would be a direct benefit to HMCTS from fewer oral renewals. It is not known how many oral renewals would be affected by these proposals, however, it is estimated that an oral renewal typically lasts around 30 minutes, and any reduction in oral renewal volumes would allow this judicial time to be devoted to other matters. In 2011 approximately 2,000 oral renewals were considered by the Administrative Court and permission to proceed with a JR was granted in roughly 300 of these oral renewals, with around 1,700 oral renewals not granted. In practice the volume of oral renewals affected by these proposals is likely to be much lower than this.

2.58 It has been assumed that any HMCTS savings would not take the form of financial savings but instead would permit judges and court administrative staff to work on other matters, potentially having a positive impact on court processing and waiting times.

Benefits to Legal Services Commission

2.59 No significant legal aid benefits to the Legal Services Commission have been identified.

Benefits to Legal Services Providers

2.60 No significant direct benefits to legal services providers have been identified. There may however be secondary impacts under both Options 2A and 2B in the form of resources being freed up for other profitable activity from a reduced volume of oral renewals.

Benefits to Third Parties

- 2.61 Individuals and businesses might gain from cases being resolved more quickly if they would benefit from reduced delays and uncertainties in the JR process. These benefits may relate to infrastructure projects and others which may support economic growth and recovery.
- 2.62 There is the potential for all cases to be resolved more quickly, not just those cases that are either dismissed without merit or have already had a judicial hearing, as fewer oral renewals may free up court resources to process other stages of the JR process more efficiently.

Wider Economic Benefits

- 2.63 There could be wider economic efficiency gains if the same outcomes are achieved within less time and with fewer resources. As mentioned above, there may be wider benefits to economic growth and recovery from these proposals.

Assumptions & Risks

- 2.64 Overall, it has been assumed that the measures would reduce the volumes of oral renewals themselves and that the eventual outcomes of the JR process would be the same, with fewer resources required.
- 2.65 There is a risk that fewer opportunities for claimants to make an oral renewal may encourage claimants to devote more resources to their initial application for permission to proceed with a JR. If so this might counter the resource savings to claimants from making fewer oral renewals. There is a potential risk that this might in turn lead to defendants devoting more resource to the initial stages of the JR process. If this risk materialised then legal services providers might gain from increased business levels.
- 2.66 Under both Options 2A and 2B, it has been assumed that there would be no impact on case outcomes and that the number of successful permission applications would remain the same. This is considered to be a reasonable assumption. Under Option 2B, the very weak cases that would be dismissed would have been highly unlikely to succeed in the oral reconsideration process. Likewise, if the judicial system has already heard the case (as under Option 2A) and an arguable case for permission could not be made on the papers, then it has been assumed that it would be unlikely for the court at an oral renewal to take a different view.
- 2.67 It has been assumed that there would be no increase in appeals to the CoA. There is a risk that under the proposals the CoA may receive increased appeals from those affected under Options 2A or 2B thus increasing pressures on their processing systems. However, the CoA route would be present with or without the proposed changes to the tests for permission, and since it has been assumed there would be no change in the final outcomes of a full JR hearing, it has also been assumed that there would be no increase in appeals to the CoA.
- 2.68 There is a potential risk of an increased volume of fresh JRs being launched if oral renewal avenues close, especially if any circumstances around the case have changed. This risk is considered to be unlikely as the defendant might be able to point out that the claim was substantially the same as the application that had been refused permission earlier.

Option 3: Introduce a new fee, payable when an application is made for an oral renewal

Description

- 2.69 Under this option, a fee would be introduced for an oral reconsideration of a claimant's application for JR permission, known as an "oral renewal". This fee would be set at the same level as the fee for a full hearing of the JR - currently £215, although potentially increasing to £235 as consulted on in November 2011. Where the application is successful in securing permission for JR at the oral renewal stage, then the fee for a full hearing would in effect be waived. The precise mechanism for doing so is yet to be determined. There is currently no fee for an oral renewal.

- 2.70 This proposal would move the court system closer to cost recovery in JR cases and thereby reduce subsidisation of the JR process. This is the primary objective of this proposal – improved court cost recovery. A secondary impact is that at the margin there may be fewer oral renewals. This consequential impact might stem from claimants having a greater financial interest in their oral renewal, which may lead to applicants evaluating further the potential benefits and costs of making an oral renewal.
- 2.71 The impact of this proposed renewal fee is considered both according to the current fee regime, where the fee would be £215, and under the scenario that the proposals for High Court fees are implemented, where the fee would be increased to £235.
- 2.72 Overall it is assumed that JR outcomes would remain unchanged as would the volume of JR cases, i.e. of initial applications for permission to proceed with a JR .

Costs of Option 3

Transitional costs

- 2.73 There would be one-off implementation and adjustment costs in terms of familiarising claimants, defendants, HMCTS, the LSC and legal service providers with the new fee system. These are expected to be negligible.

Costs to Claimants

- 2.74 Claimants would be subject to an additional court fee of £215 / £235 in the future for making an oral renewal. This fee would in effect be waived if the oral renewal is successful. The precise mechanism for doing so is yet to be determined. The oral renewal fee would not be levied at the outset if the claimant secured a fee remission.
- 2.75 In 2011 around 2,000 oral renewals were dealt with, of which around 300 were granted in the following categories:
- ‘Asylum & immigration’: Around 1,300 oral renewals of which around 200 succeeded
 - ‘Other’: Around 600 oral renewals of which around 100 succeeded.
 - ‘Criminal’: Around 100 oral renewals of which around 15 succeeded.
- 2.76 In summary, in 2011 around 1,700 oral renewals were dealt with and were not granted. Assuming a fee of £235, the maximum cost to claimants would be around £0.4m. In practice, the figure is likely to be lower than this, as this figure does not capture the potential impact of fee remissions.
- 2.77 In terms of the costs to businesses and the voluntary sector, based on anecdotal evidence, it is reasonable to assume that cases within the ‘Asylum & Immigration’ and ‘Criminal’ categories would be brought almost exclusively by individuals rather than by businesses or the voluntary sector. Therefore the maximum number of businesses / voluntary bodies affected each year would be around 500 (the number of JR renewals in the ‘Other’ category where the renewal was not granted). In reality, the number of businesses / voluntary bodies affected is likely to be much lower than this, as many JRs in the ‘Other’ category relate to issues likely to be associated with individuals, including welfare benefits, housing, family and community issues. If a fee of £235 applied to 500 cases this would generate a cost of around £120,000.

Costs to Defendants

- 2.78 No costs to defendants have been identified. This is because although the defendants would normally pay the costs of claimants who are successful in the full JR hearing, including their court fees, the new oral renewal fee would in effect be waived in such cases.

Costs to HMCTS

2.79 There may be some costs associated with the collecting of extra oral renewal fees and of operating remissions for these fees.

Costs to Legal Services Commission

2.80 The introduction of the new fees system may lead to higher legal aid costs for the LSC as a result of an oral renewal fee being paid in some cases. This would apply where the oral renewal is not successful. Legal aid is not available to businesses and any increased costs would only relate to cases where claimants are individuals. Any increased cost to the LSC would constitute a transfer between the LSC and HMCTS.

Costs to Legal Services Providers

2.81 No direct costs to legal services providers have been identified.

Costs to Third Parties

2.82 No direct costs to third parties have been identified, such as businesses.

Wider Economic Costs

2.83 No significant wider economic costs have been identified.

Benefits of Option 3

Transitional benefits

2.84 No significant transitional benefits have been identified.

Benefits to Claimants

2.85 No significant benefits to claimants have been identified.

Benefits to Defendants

2.86 No significant benefits to defendants have been identified.

Benefits to HMCTS

2.87 HMCTS would benefit from increased fee income from oral renewals. This would mirror the increased costs to claimants. The oral renewal fee is expected to contribute to improved court cost recovery and should not lead to over-recovery of court costs relating to oral renewals (which include judicial time, court administrative staff time, court estate costs and other court operating costs).

Benefits to Legal Services Commission

2.88 No net benefits to the LSC have been identified.

Benefits to Legal Services Providers

2.89 No direct benefits to legal service providers have been identified.

Benefits to Third Parties

2.90 No direct benefits to third parties have been identified, such as businesses. It has been assumed that the eventual outcomes of the JR process in terms of the number of successful JR claims would be unchanged.

Wider Economic Benefits

- 2.91 An oral renewal fee would contribute to improved court cost recovery and in effect would reduce the level of subsidy that taxpayers currently provide in relation to JR court cases. This would represent an improvement in economic efficiency.

Assumptions & Risks

- 2.92 The primary purpose of this Option is to improve court cost recovery rather than to impact upon the volume of oral renewals direct, and as such the assessment of costs and benefits assumes that the volume of oral renewals would remain unchanged. There is a risk that, at the margin, a secondary impact of the proposals might be a reduced volume of oral renewals. It is unclear to what extent this would apply. For example, a claimant who makes an oral renewal largely to delay the implementation of a government decision (and only around one in six oral renewals are successful) might continue to do so if the value to them of delay is greater than the cost of them of the new oral renewal fee. Oral renewal volumes are also unlikely fall in relation to claimants who secure fee remissions and to legally aided claimants whose costs are covered by the Legal Services Commission.
- 2.93 If there were any reduction in the volume of oral renewals it has been assumed that any such decrease would be associated with weaker cases which would have been unsuccessful. This is because unsuccessful cases would not secure a waiver for the new oral renewal fee.
- 2.94 If there were any reduction in the volume of oral renewals it has been assumed that the eventual outcomes of the JR process in terms of the number of successful JR claims would be unchanged. Where oral renewals are no longer made these cases would be resolved more quickly. This may generate costs or benefits for claimants, defendants and third parties (including businesses and other organisations) depending on whether they would gain or lose from the quicker implementation of government decisions. In terms of the wider benefits, reduced delays and uncertainties may support economic growth and recovery.
- 2.95 If there were any reduction in the volume of oral renewals then claimants would save from the associated reduced need for legal services. This might indirectly generate a secondary impact for legal services providers in the form of reduced levels of oral renewal business, assuming this generates its own additional income. At the same time resources would be freed for legal services providers to devote to other profitable activity. It is also possible that any reduction in the volume of oral renewals might benefit defendants if this enables them to save on resource input into the case.
- 2.96 Given that the oral renewal fee is still not expected to cover the associated court costs completely and hence that oral renewals remain partially subsidised by HMCTS, any reduction in oral renewal volumes would generate a net benefit for HMCTS. It is assumed that judicial and administrative savings associated with any reduction in oral renewal volumes that might arise would not lead to monetary savings, but rather would allow these staff to work on other matters, potentially having a positive impact on court processing and waiting times.

Option 4: Implement Options 1 to 3

2.97 Option 4 relates to implementing Option 1, Option 3, and either or both of Options 2A and 2B.

Costs of Option 4

Transitional costs

2.98 There may be one-off familiarisation and adjustment costs to claimants, defendants and HMCTS. These are expected to be negligible. There might also be some initial satellite litigation to determine how the new provisions work.

Costs to Claimants

2.99 There may be costs to claimants if they would benefit from any delays or uncertainties in the process, which are expected to be reduced under the proposals.

2.100 Claimants might pay a new fee for the oral renewal in future. This would only affect those claimants who apply for an oral renewal which is not successful. The fee would also not apply to claimants who secure a fee remission or who secure legal aid and whose costs would be covered by the Legal Services Commission. The maximum total additional fee income for HMCTS is around £0.4m.

Costs to Defendants

2.101 No significant direct costs to defendants have been identified.

Costs to HMCTS

2.102 There may be costs to HMCTS from processing the new oral renewal fee and from processing associated fee remissions.

Costs to Legal Services Commission

2.103 There may be increased legal aid costs from the introduction of the oral renewal fee relating to claimants who are eligible for legal aid and who are unsuccessful at the oral renewal stage. Any increased costs to the LSC would constitute a transfer between the LSC and HMCTS.

Costs to Legal Services Providers

2.104 No direct costs have been identified. Legal services providers may indirectly lose out from any reduction in business levels from reduced volumes of oral renewals.

Costs to Third Parties

2.105 Businesses and individuals may lose out from cases being resolved more quickly if they benefit from delays and uncertainties in the JR process.

Wider Economic Costs

2.106 No significant wider economic costs have been identified.

Benefits of Option 4

Transitional benefits

2.107 No significant transitional benefits have been identified.

Benefits to Claimants

2.108 Some claimants who win their case may benefit from the quicker resolution of their case with the same amount of resource input. This would apply if they do not currently operate in the proposed

new timeframes. There may be some resource savings for claimants who longer apply for an oral renewal and whose JR outcomes remain the same.

Benefits to Defendants

2.109 Defendants would benefit from any reduction in oral renewals and from any reduction in delays and uncertainties in the JR process.

Benefits to HMCTS

2.110 HMCTS would benefit from increased overall fee income from the new oral renewal fee and would also save operating costs from fewer oral renewals. The maximum total possible additional fee income for HMCTS is around £0.4m.

Benefits to Legal Services Commission

2.111 The LSC may benefit if any reduction in oral renewal volumes leads to reduced legal aid fees being paid to legal services providers.

Benefits to Legal Service Providers

2.112 No direct benefits to legal services providers have been identified. Any reduced volume of oral renewals would enable legal services providers to devote resources which would otherwise have been used on oral renewals on other profitable activity.

Benefits to Third Parties

2.113 Individuals and businesses might indirectly gain from any reduction in delays or uncertainties in the JR process. These benefits may relate to infrastructure projects and others which may support economics growth and recovery.

Wider Economic Benefits

2.114 Wider economic benefits would be generated by the same outcome being achieved with less overall resource and in a shorter time. As mentioned above, there may also be wider benefits to economic growth and recovery from these proposals.

Assumptions & Sensitivities

2.115 All assumptions and risks outlined in earlier sections apply.

3. One In One Out

3.1 The proposals in this Impact Assessment are out of scope of the One In One Out rule as the reforms do not relate to regulation.