

Title: Consultation on Modernising Judicial Terms and Conditions IA No: RPC Reference No: Lead department or agency: Ministry of Justice Other departments or agencies:	Impact Assessment (IA)			
	Date: 15/06/2016			
	Stage: Development/Options			
	Source of intervention: Domestic			
	Type of measure: Consultation			
Contact for enquiries: judicialterms@justice.gsi.gov.uk				

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

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2014 prices)	One-In, Three-Out?	Business Impact Target Status
£m	£m	£m	Not in scope	Qualifying provision

What is the problem under consideration? Why is government intervention necessary?
 The UK judiciary is renowned for its independence, impartiality and its role in upholding the rule of law, but the judicial system itself has remained largely unchanged for many years. With the undertaking by the Lord Chancellor, Lord Chief Justice and Senior President of Tribunals to fundamentally reform the courts and tribunals system in England and Wales in order to provide better services for court users and better value for the taxpayer, the Government is taking this opportunity to look at how it can modernise the judicial system to help deliver this ambitious change programme. Depending on consultation responses, Government intervention might be needed to deliver relevant changes through legislation or amendments to judicial terms and conditions.

What are the policy objectives and the intended effects?
 In 2013, the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals established a Steering Group to look at the use of the judiciary and to formulate strategic proposals for their consideration and agreement. The scope of the Steering Group's work included particular consideration of "the terms and conditions of salaried and fee-paid judicial office holders, the promotion of diversity and the deployment of the judiciary within the modernised courts and tribunals." The final package of proposals presented in the consultation paper are those that the Group considered should be prioritised for wider consultation. The aim of the proposals is to promote judicial diversity, enhance judicial career prospects, increase flexibility of deployment, and embed modern business practices to complement the wider reforms taking place in the courts and tribunals.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)
 The government has considered the following options:
 0) Do nothing;
 1) Introducing a new single fixed term for new fee-paid judges;
 2) Introducing the ability to recruit to leadership positions for a fixed term, with accompanying temporary remuneration;
 3) Introducing an expectation – rather than guarantee – of the number of days existing fee-paid court judges are required to sit;
 4) Removing the entitlement of existing fee-paid judges to claim travel expenses for journeys to their primary courts or tribunals;
 5) Introducing a requirement for existing salaried and fee-paid judges to provide notice of intention to resign or retire.
 Options 1-5 are the preferred options to achieve the policy objectives outlined above.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 3 - 5 years after Royal Assent				
Does implementation go beyond minimum EU requirements?			N/A	
Are any of these organisations in scope?			Micro No	Small No
			Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ 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 SELECT SIGNATORY:  Date: 15/09/16

Summary: Analysis & Evidence

Policy Option 1

Description: Introducing a new single non-renewable tenure for fee-paid judges, with a duration of either 6, 10 years.

FULL ECONOMIC ASSESSMENT

Price Base Year 2015/16	PV Base Year 2015/16	Time Period Years 20yrs	Net Benefit (Present Value (PV)) (£m)		
			Low: £11m	High: £33m	Best Estimate: £11m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	£2.2m	Optional
High	Optional	£4.7m	Optional
Best Estimate	Nil	£2.2m	£11m

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

Non-renewable fixed terms would lead to a large number of judges leaving office at the end of their term. Although they might move into salaried posts or other fee-paid roles, these judges would need to be replaced so additional recruitment campaigns would need to be run. This would lead to additional cost for the Judicial Appointments Commission (JAC) of £0.3m to £0.8m per year and additional induction training cost of £1.9m to £3.9m per year for the MoJ.

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

There is a potential cost to individual office holders if they leave the judiciary at the end of their term rather than seeking salaried office or different fee-paid roles, though these costs are difficult to quantify.

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	Nil	Nil	Nil

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

None

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

It is anticipated that more regular recruitment campaigns will help to increase judicial diversity by bringing more women and members of BAME groups into the judiciary. The expectation that office holders will look for new fee-paid roles or apply for salaried office at the end of their first term could also address concerns about lack of career progression.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5%
<p>Non-renewable fixed terms might be less attractive to some prospective judges who might prefer a greater degree of permanency. The pool of potential fee-paid judges might shrink if judges who reach the end of their term cannot re-apply for the same office. This could also lead to a loss of experience and skill. It is anticipated that wider HMCTS reforms would reduce the total number of fee-paid judges required, in which case the costs associated with this proposal would fall proportionately.</p>		

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: NA	Benefits: NA	Net: NA	
			NA

Summary: Analysis & Evidence

Policy Option 2

Description: Introducing the ability to recruit to leadership positions for a fixed term, with accompanying temporary remuneration

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)			
			Low: Optional	High: Optional	Best Estimate: Unknown	
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	Unknown		Unknown	Unknown		
<p>Description and scale of key monetised costs by 'main affected groups'</p> <p>The quantum of any costs and benefits is dependent on the scope and size of uplift. This will be determined through responses to the consultation and a full IA will be produced when these have been determined.</p>						
<p>Other key non-monetised costs by 'main affected groups'</p> <p>If the size of the uplift is too small, it may dis-incentivise judges from taking on leadership roles.</p>						
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	Unknown		Unknown	Unknown		
<p>Description and scale of key monetised benefits by 'main affected groups'</p> <p>The quantum of any costs and benefits is dependent on the scope and size of uplift. This will be determined through responses to the consultation and a full IA of this option will be produced when these have been determined.</p>						
<p>Other key non-monetised benefits by 'main affected groups'</p> <p>It is anticipated that this policy would result in a greater turnover of judges in key leadership roles. This could increase diversity in these leadership positions because the higher turnover would present more opportunities for BAME and women to achieve such positions. This proposal would also clarify the circumstances in which judges would receive an additional allowance for their leadership responsibilities and for how long they should retain it.</p>						
Key assumptions/sensitivities/risks				Discount rate	o	

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: NA	Benefits: NA	Net: NA	
			NA

Summary: Analysis & Evidence

Policy Option 3

Description: Introducing an expectation – rather than guarantee – of number of days existing fee-paid court judges are required to sit

FULL ECONOMIC ASSESSMENT

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

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	Nil	£0.2m	£1.7m

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

Court based fee paid judges appointed before 2014 had a guaranteed minimum sitting of 15 days a year. This also entitled to sick pay if they were unable to sit this number of days due to sickness. Removing this guaranteed minimum sitting days would remove the entitlement to sick pay and potentially reduce the earnings of fee paid judges in the courts. The lost earnings are estimated at £0.2m on average over the next 10 years. It might also be that some judges would be offered less than 15 days in the future. As they would only be paid for the days they sat, this would further reduce sitting fees.

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

None

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		£0.2 m	£1.7m

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

Court based fee paid judges appointed before 2014 had a guaranteed minimum sitting of 15 days a year. This also included an entitlement to sick pay if they were unable to sit this number of days due to sickness. Removing this guaranteed minimum sitting days would remove the entitlement to sick pay and so reduce the earnings of fee paid judges in the courts. It might also be that some judges sit less than 15 days and so lose some fees. The savings to HMCTS are estimated at £0.2m on average over the next 10 years.

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

None

Key assumptions/sensitivities/risks

None

Discount rate (%)

3.5%

BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: NA	Benefits: NA	Net: NA	NA

Summary: Analysis & Evidence

Policy Option 4

Description: Removing the entitlement of existing fee-paid judges to claim travel expenses for journeys to their primary courts

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: £0.5m
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				£4.9m	£42m
<p>Description and scale of key monetised costs by 'main affected groups'</p> <p>Spending on travel and subsistence by fee-paid office holders attending their primary court or tribunal in 2015/16 is estimated at £4.9m. Removing this payment would therefore increase the costs to fee paid judicial office holders by £4.9m a year, as they would have to fund their own travel to their primary place of work.</p>					
<p>Other key non-monetised costs by 'main affected groups'</p> <p>None</p>					
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				£4.9m	£42m
<p>Description and scale of key monetised benefits by 'main affected groups'</p> <p>Spending on travel and subsistence by fee-paid office holders attending their principal workplace in 2015/16 is estimated at £4.9m. Removing this would save HMCTS £4.9m a year. There would also be a small savings from reduced administration of about £60k a year.</p>					
<p>Other key non-monetised benefits by 'main affected groups'</p> <p>None</p>					
Key assumptions/sensitivities/risks					Discount rate (%)
If the number of sitting days required falls then there would be a proportionate reduction in the costs and benefits realised.					3.5%

BUSINESS ASSESSMENT (Option 4)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: NA	Benefits: NA	Net: NA	
			NA

Summary: Analysis & Evidence

Policy Option 5

Description: Introducing a requirement for existing salaried and fee-paid judges to provide notice of intention to resign or retire

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: Nil
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	Nil		Nil		Nil
Description and scale of key monetised costs by 'main affected groups'					
None					
Other key non-monetised costs by 'main affected groups'					
None					
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	Nil		Nil		Nil
Description and scale of key monetised benefits by 'main affected groups'					
There may be some small administrative savings that would result in having a notice period and there would be some benefits to the smooth running of the business but in financial terms these have been assumed to be negligible					
Other key non-monetised benefits by 'main affected groups'					
None					
Key assumptions/sensitivities/risks					Discount rate
The requirement to give notice may make joining the judiciary less attractive.					0

BUSINESS ASSESSMENT (Option 5)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: NA	Benefits: NA	Net: NA	
			NA

Evidence Base (for summary sheets)

A. Background

1. The UK judiciary is renowned for its independence, impartiality and its role in upholding the rule of law. The judicial system itself, though, has remained largely unchanged for many years. With the undertaking by the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals to fundamentally reform the courts and tribunals system in England and Wales, the Government is also taking this opportunity to look at how it can modernise the judicial system to help deliver this ambitious change programme.
2. The judiciary must adapt in order to continue working effectively in a modernised court and tribunals system. The Government has been working closely with the senior judiciary to identify those elements of the judicial career that could be reshaped to ensure the judiciary is best placed to continue its essential work during and after court reform.
3. In 2013, the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals established a Steering Group to look at the use of the judiciary and to formulate strategic proposals for their consideration and agreement. The scope of the Steering Group's work included particular consideration of "the terms and conditions of salaried and fee-paid judicial office holders, the promotion of diversity and the deployment of the judiciary within the modernised courts and tribunals."
4. The Steering Group explored several potential areas of reform that might achieve these aims. The final set of proposals, summarised in this Impact Assessment (IA), are those that the Group considered and recommended should be prioritised during a time when the courts and tribunals system itself will be undergoing significant reform.
5. This IA should be read alongside the consultation on Modernising Judicial Terms and Conditions to understand the full context. It presents the evidence base for the options considered and assesses the likely costs, benefits, risks and wider impacts of implementing them.

B. Policy Rationale and Objectives

6. There are four overarching rationales for modernising judicial terms and conditions. They include promoting judicial diversity; enhancing judicial career prospects; increasing flexibility of deployment; and embedding modern business practices. These are explored fully in the consultation document and also described briefly in section D of this Impact Assessment.

C. Affected Stakeholder Groups, Organisations and Sectors

7. These reforms would primarily affect individuals who hold a judicial appointment and those wishing to become a salaried or fee-paid judge. A list of the main groups and stakeholders who will be affected is shown below:
 - The judiciary, including salaried and fee-paid judicial office holders throughout the courts and tribunals in England and Wales
 - HM Courts and Tribunal Service (HMCTS) which is the part of the Ministry of Justice (MoJ) which is responsible for administering the courts and tribunals service
 - Judicial Appointments Commission (JAC) which is an executive non-departmental public body, sponsored by the Ministry of Justice, responsible for selecting candidates for judicial office on merit, through fair and open competition, from the widest range of eligible candidates.
 - Wider society, including taxpayers and users of the courts and tribunals service.

D. Description of Options Considered

Option 0 – Do nothing

8. This option would see no changes to the tenure of fee-paid office-holders. Fee-paid office holders currently appointed on four of five year fixed terms would continue to have their terms renewed automatically at the end of their term. They would continue to be treated as permanent after the first renewal because they fall under Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations.
9. In relation to leadership judges, the current situation would continue where some leadership judges receive an uplifted salary regardless of how long their leadership position lasts. Others would continue to receive no uplift. Some leadership positions would continue to be held for a fixed term, others would not.
10. Finally, aspects of judicial terms and conditions would remain unchanged. Some fee-paid judges would continue to claim travel expenses for journeys to and from their primary courts and tribunals, despite salaried judges not having the same benefit. Some fee-paid judges in the courts would continue to be paid for a guaranteed number of days, regardless of whether they sat on all of those days. And the terms of some salaried and fee-paid judges would continue to be unclear about the length of retirement notice that would be most desirable.

Option 1 - Introduce a new single fixed-term for fee-paid judges, with a duration of either 6, 8 or 10 years.

11. The current fee-paid judicial cohort plays an important role in the delivery of justice. They offer a flexible resource that, in the courts, sits to cover periods of high demand or the leave of salaried judiciary. In the tribunals, most sitting days are undertaken by fee-paid judiciary. They are paid a daily fee for the days they sit.
12. Under this option all new fee-paid judges would be appointed for a single fixed term and the appointment would be non-renewable to ensure that sufficient turnover is generated within the pool of fee-paid judges. At the end of their term, office holders could apply for a salaried post or another fee-paid role.
13. A key objective of this policy proposal is to create clearer career progression for the judiciary. The 2010 Advisory Panel on Judicial Diversity identified the lack of a defined judicial career path as a barrier to applications to the judiciary. Potential applicants are unclear of their career path options and the skills they would need to progress from each tier to the next. This option would help to set out the route from fee-paid office into the salaried judiciary or other challenging fee-paid roles.
14. The other key objective of this proposal is to improve judicial diversity. This is a key priority and statutory duty for both the Lord Chancellor and the Lord Chief Justice. Currently within the judiciary, women and those who declare as Black, Asian or Minority Ethnic (BAME) are under-represented when compared to national census data. For example, only 16% of Recorders are women and approximately 30% of Deputy District Judges (DDJs) and DDJs (Magistrates Court) are women. Only 7% of Recorders and 6% of DDJs come from a BAME background¹; census figures indicate that numbers of judges from a BAME background is not reflective of the UK's demographic makeup².
15. Statistics show that younger judges are more representative. For example, amongst the 40-49 age bracket, 50% of DDJs and DDJs (MC) are women. Additionally, between 10% and 13% of DDJs, DDJs (MC) and Recorders come from a BAME background. These figures paint a better picture compared to the overall composition of the current cohort. This is equally true in the tribunals where

¹ Judicial Diversity Statistics 2015, <https://www.judiciary.gov.uk/publications/judicial-statistics-2015/>

² Office of National Statistics 2011 consensus; 14% of British population identifies as BAME

younger cohorts tend to be more representative. Data also shows that fee-paid judicial cohort tend to be younger, and therefore more diverse, than their salaried counterparts.

16. Given that the majority of salaried judges were previously fee-paid judges and the fee-paid pool contains younger more diverse judges, the Government anticipates that increasing the turnover of the fee-paid cohort would positively impact on diversity within the salaried judiciary, providing that new fee-paid appointments continue to attract young, diverse candidates. Increased turnover in the fee-paid pool was also identified by the 2010 Advisory Panel on Judicial Diversity as an effective mechanism for increasing judicial diversity. Increased diversity and turnover amongst Deputy High Court Judges is particularly important given that 70% of current High Court judges had previously sat as Deputy High Court judges.
17. We have not been able to assess diversity on social mobility grounds due to lack of data. Since October 2015, however, the JAC has begun to record such information in its selection exercises. We will therefore use this data to analyse social mobility impacts and benefits of proposals further as data quality and usability improves.
18. As well as seeking views on the desirability of introduce a new, non-renewable fixed term, the Government is also seeking views on the length of the proposed new fixed term. The precise length will be determined on the basis of the consultation responses. The following options have been considered:
 - **Option 1a – Introducing a new non-renewable fixed term for new fee-paid appointments, with a duration of 6 years.** Six years is the minimum length of tenure proposed, as this is the average point at which fee-paid judicial office holders are successful in applying for salaried office.
 - **Option 1b – Introducing a new non-renewable fixed term for new fee-paid appointments, with a duration of 8 years.** Similar to option 1a but the longer tenure of eight years would help make sure that talented judges who might take longer to develop the skills and experience needed for salaried office have the opportunity to do so.
 - **Option 1c – Introducing a new non-renewable fixed term for new fee-paid appointments, with a duration of 10 years.** Similar to option 1b however the longer tenure of ten years would be most cost effective for the Department by reducing the potential number of recruitment campaigns. However, this would lead to lower judicial turnover rates which might slow progress on increasing judicial diversity.

Option 2 - introduce the ability to appoint leadership positions for a fixed term, with accompanying temporary remuneration.

19. The current system of leadership judges, which is set out in the consultation document, is varied in terms of tenure, pay responsibilities and duties. This has led to inconsistencies in practice. For example, whilst some leadership roles, such as the Senior President of Tribunals or the Chief Coroner, are held on a fixed-term basis, others are not. In addition some leadership roles are rewarded by extra remuneration while others are not and in many cases the current arrangements mean that an office holder's salary does not decrease correspondingly when their leadership post ends. For example, some senior circuit judges hold their post for five years before reverting back to a circuit judge, but still receive the senior circuit judge salary. This has resulted in the illogical position where many office holders are receiving uplifted remuneration indefinitely for responsibilities that they will not carry out for the remainder of their career.
20. In order to allow the judiciary to have greater flexibility of deployment the Government is seeking views on whether office holders should be appointed to leadership positions for fixed terms, with the length of term being set by the judiciary in accordance with business need. This would give greater clarity to office holders and the judiciary generally about how long an office holder was expected to fulfil a leadership post.

21. Additionally, the Government anticipates that fixed-term leadership positions could help to enhance judicial career prospects with more office holders having the opportunity to apply for leadership roles which would be held for a limited period. This could also assist in promoting judicial diversity if female and BAME judges have more opportunities to gain leadership experience.
22. The Government considers that remuneration for leadership responsibilities should only be paid for the duration of the post. This would bring clarity and fairness to leadership posts and reflect working environments in the rest of the public sector.

Option 3 - introduce an expectation, rather than a guarantee, of the number of days fee-paid courts judges are required to sit

23. Within fee-paid judicial terms and conditions there are inconsistencies about the number of days judges are required to sit. Prior to 2014, terms and conditions of fee-paid judges in the courts refer to a minimum number of 15 sitting days. Judges with this provision can therefore claim a fee for any days that have not been offered to them by HM Courts & Tribunals Service (HMCTS). Following the judgment in *Miller & Others vs. MoJ*, fee-paid judges can also claim for any pre-booked or guaranteed sitting days they have had to cancel through illness.
24. In contrast, following modernisation of their terms and conditions in 2010, fee-paid tribunal judges have no minimum guarantee. Instead, tribunal judges must make themselves available for a minimum number of 30 days. Since 2014, this has also been the case for newly appointed Deputy District Judges (DDJ) and Recorders.
25. The Government considers that terms and conditions of office holders should only deviate from each other when there is a strong and logical reason to do so. This option would therefore bring the terms and conditions of fee-paid judges in the courts into line with fee-paid judiciary in the tribunals and newly appointed DDJs and Recorders. The Government can see no reason, in principle, to distinguish between current and new appointees.
26. Removing guaranteed minimum sittings would also help HMCTS by increasing flexibility of deployment. It would allow the business to react to the rise and fall in caseload and manage the supply of fee-paid judges accordingly without the attached obligation to meet minimum guaranteed sitting days.

Option 4 - Removing the entitlement of existing fee-paid judges to claim travel expenses for journeys to their primary courts or tribunals;

27. At present, the fee-paid judiciary in the courts and tribunals are able to claim travel expenses for travel to any venue when travelling on official business, even if they sit almost exclusively at a single or primary court. Salaried judges cannot claim for travel to their primary court, so this option would bring arrangements for fee-paid judges into line with their salaried counterparts. Should fee-paid judges be required to sit in jurisdictions other than their primary court, however, they would continue to retain their entitlement to claim for travel costs in line with other judicial office holders.
28. For the financial year 2014-2015, a total of £22.5m was spent on judicial T&S, but government data does not specify how much of this was spent directly on travel costs to primary courts of the fee-paid judiciary. Even so, it is considered that this option, if pursued, would ensure better value for money for the taxpayer.

Option 5 - introduce a retirement notice period for both salaried and fee-paid judges, with a duration of either 3, 6 or 12 months.

29. Most judicial office holders are not required to give notice of their intention to resign or retire. Most salaried courts judiciary are asked to give the longest possible notice, but formal notice is not specified in their terms and conditions.
30. Although it would be rare for a judge to retire without any notice, there have been occasions where office holders have given very short notice of their intention to retire. This can cause operational difficulties as filling judicial vacancies takes on average 20 weeks and in some cases can take up to a year. This includes time to plan recruitment so that outreach is as effective as possible at encouraging a diverse range of candidates to apply for office.
31. The Government is seeking views on whether a retirement notice period should be added to terms of conditions of new appointments and existing office holders to minimise operational difficulties and reflect modern business practice. A reasonable period of notice would also offers judges the ability to plan for retirement and for the MoJ to make sure pension arrangements were in place in time.
32. The precise duration will be determined based on the consultation responses. Three options for the length of the notice period are being considered:
- **Option 5a - 3 month notice period.** This is in line with pay groups in the public sector and would allow enough time for judges to confirm their pension arrangements. However, three months would limit time to recruit for a replacement and would limit HMCTS's and the judiciary's ability to strategically plan for judicial resource requirements. This could therefore have a negative impact on the effective delivery of justice.
 - **Option 5b - 6 month notice period.** This would be more in line with international judicial comparators and better reflects the importance and standing of judicial office. This would also allow more time for succession planning than a 3 month notice period. Indeed the Lord Chancellor agreed to set a notice period of 6 months for the recently modernised DDJ and recorder terms.
 - **Option 5c - 12 month notice period.** This would allow enough time for succession planning and recruiting for a replacement. This option would minimise any adverse impacts on the delivery of justice. A 12 month notice period, however, is long by public sector standards and is restrictive for the office holder.

E. Cost and Benefit Analysis

33. This IA follows the procedures and criteria set out in the Impact Assessment Guidance and is consistent with the HM Treasury Green Book.
34. The IA aims to identify, as far as possible, the potential impacts of the option on society. A critical part of the process is to undertake a Cost Benefit Analysis (CBA) of the proposals. CBA assesses whether the proposals would deliver a positive impact to society, accounting for economic and social factors and, where possible, seeks to show how those impacts are distributed across the affected groups. The IA should therefore not be confused with a financial appraisal, which is focused purely on assessing how much resource government would save from certain proposals.
35. Where possible, this IA identifies both monetised and non-monetised impacts on individuals, groups and businesses in England and Wales with the aim of understanding what the overall impact on society might be from the proposals under consideration. CBA places a strong focus on the monetisation of costs and benefits. There are often, however, important impacts that cannot sensibly be monetised. These might be impacts on certain groups of society or some data privacy impacts, positive or negative. CBA in this IA is therefore interpreted broadly, to include both monetisable and non-monetisable costs and benefits, with due weight given to those that are non-monetisable.

36. The costs and benefits of each proposal are compared to option 0, the do nothing or 'baseline' case. As the 'baseline' option is compared to itself, the costs and benefits are necessarily zero, as it is its Net Present Value (NPV).
37. The annual costs and benefits are presented in steady state throughout this IA. All estimates, unless stated otherwise, are annualised figures in 2015-16 prices.

Option 1 - Introduce a new single fixed-term for fee-paid judges, with a duration of either 6, 8 or 10 years.

38. For the purposes of estimating the impact of this option, it has been assumed that the current ratio of fee-paid and salaried judges would continue and that the current average number of days sat by fee paid judges in each jurisdiction would remain constant.

Costs of Option 1

HMCTS & MoJ

39. Limiting the term that fee paid judges could hold office would increase the frequency that recruitment would be required and also lead to more induction training. The shorter the term, the more regular the recruitment. The costs of recruiting additional judges is difficult to estimate with any degree of precision and would vary greatly depending on the type of judges being recruited and the process required. If the Judicial Appointments Commission (JAC) were to have to manage a substantial increase in the number of recruitment competitions each year, there would be some increase in direct administration costs. This would be in addition to the cost of panel members undertaking the interviews.
40. The cost of induction training also varies widely depending on the number and type of judge being trained and the jurisdiction they are being trained to sit in. This increase in induction costs would fall to the MoJ.
41. The costs associated with options 1a-c are presented in Table 1 below.

Table 1: Costs to MoJ of Options 1a-c

	Option 1a	Option 1b	Option 1c
	Cost under 6-year fixed term	Cost under 8-year fixed term	Cost under 10-year fixed term
	£m	£m	£m
MoJ	3.9	2.6	1.9
Judicial Appointments Commission (JAC)	0.8	0.4	0.3
Total	4.7	3.0	2.2

42. The cost to MoJ of options 1a, 1b and 1c are expected to be £3.9m, £2.6m, and £1.9m respectively. The majority of this cost would arise as a result of new fee-paid judges attending training events or backfilling for salaried judges engaged in the recruitment process. The JAC would also incur additional costs for Options 1a, 1b and 1c. These are estimated at £0.8m, £0.4m and £0.3m respectively.

Benefits of Option 1

Wider society

43. The higher turnover of judges is could increase the diversity of the judiciary because judges appointed more recently tend to be more diverse than the current cohort of judges. However, if a short fixed term were introduced, this could mean that some relatively recent appointments might choose to leave the judiciary at the end of their term rather than apply for another fee-paid role or salaried office, and some of those exiting might themselves be from diverse backgrounds. There is also a risk that the new fixed-term grade may not appeal to some groups, in particular those who have greater care responsibilities, who may be more attracted to the flexibility of holding a fee paid office indefinitely.

Net impact of Options 1a-c

44. The increase in recruitment and induction cost would not start to be incurred until the point at which the first judges were required to leave office 6, 8 or 10 years after the proposal is introduced. For this reason Net Present Values (NPVs) have been calculated over a 20 year period so that a better understanding of the cost of this policy can be obtained. **The NPV of option 1a, option 1b and option 1c are estimated at -£33m, -£18m and -£11m respectively.**

Option 2 - introduce the ability to recruit to leadership positions for a fixed term, with accompanying temporary remuneration.

45. This option would introduce a fixed term for leadership roles and provide a leadership allowance paid only while the leadership position is held. The level of uplift is likely to be considered by the Senior Salaries Review Body.

46. The group with the greatest number of leadership roles is Senior Circuit judges. To help understand the possible financial implications of this proposal, some illustrations have been produced based on this group of judges. These are indicative only and should not be taken as proposals in themselves. Nor would a new leadership uplift be necessarily limited to Senior Circuit judges.

47. Through consultation, the Government wishes to clarify the range of positions that should be included under this option, the length of the fixed term and the level of uplift. This impact assessment will be updated following consultation.

Costs of Option 2

48. The removal of the leadership allowance at the end of the fixed term would result in a reduction of earnings for some judges compared to the current arrangements. This is because some judges currently continue to receive increased pay, regardless of whether the leadership position continues.

Benefits of Option 2

HMCTS

49. As an example, Senior Circuit judges currently enjoy an 8% premium in salary compared to Circuit judges. Table 2 below compares the savings which could be made if this leadership role were reformed and future Senior Circuit judges were paid a leadership allowance less than 8%.

Table 2: Savings from paying Senior Circuit judges a leadership allowance, excluding the impact of removing the allowance once a judge is no longer in a leadership role:

Leadership uplift	Annual saving (£k)
5%	£450
6%	£300
7%	£150
8%	£0
9%	-£150
10%	-£300

50. It is proposed that a leadership allowance would only be payable while the leadership role was held. It is not clear how many of the current Senior Circuit judges are no longer in a leadership role but continue to enjoy the salary of a Senior Circuit judge, for illustrative purposes it has been assumed that 10% of current Senior Circuit judges no longer have a leadership role but continue to enjoy the salary of a Senior Circuit judge. Table 3 below shows estimates of the savings from removing the allowance from future Circuit judges once they have relinquished their leadership role.

Table 3: Savings from removing leadership allowance once no longer in leadership role (assumed to be 10% of Senior Circuit judges):

Leadership uplift	Annual saving (£k)
5%	£75
6%	£90
7%	£105
8%	£120
9%	£135
10%	£150

51. Table 4 summarises the total saving to the MoJ of introducing a fixed-term leadership role accompanied by a leadership allowance for the office of Senior Circuit judge. These estimates assume that 10% of Senior Circuit judges are no longer in a leadership role.

Table 4: Total savings from introducing fixed-term leadership roles and a leadership allowance for the office of a Senior Circuit Judge:

Leadership uplift	Annual saving (£k)
5%	£525
6%	£390
7%	£255
8%	£120
9%	-£15
10%	-£150

Benefits to wider society

52. It is anticipated that this policy would result in a greater turnover of key leadership roles. This would improve diversity within the judiciary in these leadership positions because, as discussed in under proposal 1 above, the higher turnover would give greater opportunities for BAME and women to achieve such positions. Increasing diversity among judges in leadership and senior roles is a key aim of the Government and of the senior judiciary.

Net impact of Option 2

53. The change in cost incurred by the MoJ would be matched by change in remuneration paid to judicial office holders. As the change in costs will be matched by the change in remuneration paid to judicial office holders, **the net economic impact is estimated to be neutral.**

Option 3 - introduce an expectation – rather than guarantee – of the number of days fee-paid judges sit

Benefits of Option 3

HMCTS

54. With the exception of deputy district judges and recorders appointed from 2014, court based fee-paid judges are guaranteed a minimum of 15 sitting days a year. If a judge is not offered this number of days, he or she can claim payment for the shortfall in the number of days offered – though HMCTS have confirmed that in practice this rarely, if ever, occurs. However a recent tribunal judgement found that fee-paid judges were treated unequally with regards to sick pay in comparison to their salaried counterparts. The tribunal ruled that fee-paid judges should be paid for the balance of any days, up to their guaranteed minimum, that could not be sat due to sickness. Removing a guarantee for the minimum number of days offered to new appointees would save money over time as those with the minimum guarantee retire and HMCTS would not be obliged to pay new fee-paid office holders sick pay for days they could not sit. It is also possible that judges could be offered less than the current guaranteed minimum of 15 days and so see a reduction in their fee income.
55. The total expenditure, including employer pension cost and national insurance cost, for fee-paid sick leave in 2015/16 was £0.3m.
56. These costs are expected to decline over time as fee paid judges appointed prior to 2014 leave their fee paid office and so their numbers decline. It is expected that approximately 5% of fee-paid judges currently able to claim sick pay will leave each year over the next ten years. It has been assumed that sick payments are evenly distributed throughout the current pool of judges able to claim and so, under option 1, the expenditure on sick leave will fall by 5% each year for the next ten years. It is estimated that without reform, choosing option 1, HMCTS would incur a total cost of approximately £2.2m over the next 10 years. Therefore by implementing option 2, reforming fee-paid sick pay now, HMCTS would save £2.2m. How much of this prevented cost is realised depends on when the change in policy takes place as for ever year the policy is not implemented the pool of fee paid judges claiming sick pay will fall. Any benefit to HMCTS will be reflected by an equal loss in earnings for fee paid judges as this is a transfer impact.

Wider society

57. Savings for HMCTS would have wider benefits for the taxpayer.

Net impact of Option 3

58. The lower costs incurred by the department are matched by loss of earnings paid to judicial office holders. As the lower costs will be matched by the loss of earnings paid to judicial office holders, **the net economic impact is estimated to be neutral.**

Option 4 - Removing the entitlement of existing fee-paid judges to claim travel expenses for journeys to their primary courts or tribunals

Benefits of Option 4

HMCTS

59. Spending on travel and subsistence by fee-paid courts judicial office holders attending their principal workplace in 2015/16 is estimated at £4.9m³. Removing this payment would also reduce the cost of administrating the claims, saving an estimated £60k a year.

Wider society

60. Savings for HMCTS would have wider benefits for the taxpayer.

Cost to judges

³ Data provided from analysis of MoJ financial database regarding judicial payments

61. Fee paid judges traveling to their primary court or tribunal centre would have to pay for their own travel and subsistence. In 2015/16 this spend was estimated at £4.9m.

Net impact of Option 4

62. The lower cost incurred by the MoJ would be matched by an increase in the costs borne by judicial office holders. As the lower costs would be matched by the increase in costs paid to judicial office holders, the net economic impact would be limited to the savings resulting from reduced administration costs, estimated to be £0.5m over 10 years.

Option 5 - introduce a retirement notice period for both salaried and fee-paid judges, with a duration of either 3, 6 or 12 months.

Benefits of Option 5a-c

HMCTS

63. Although judges are not currently required to give notice of when they are going to retire, many do give at least some sort of indication and for others it is known they will be retiring because they are approaching their compulsory retirement age. In theory, a judge could give notice part way through hearing a case but in practice this rarely, if ever, occurs and, if it does occur, it is more likely to be due to ill health rather than a judge just retiring with no notice.

64. While it is desirable for judges to give notice of when they are going to retire from the department's point of view for succession planning purposes, it would also help ensure that a judge's pension payments are made without delay. There may be some small administrative savings that would result in having a notice period and there would be some benefits to the smooth running of the business but in financial terms these are assumed to be negligible.

Wider society

65. It is not thought that there will be any benefits to wider society from these reforms.

Net impact of Options 5a-c

66. The net impact of all these options are expected to be minimal.

F. Risk and Sensitivity Analysis

Option 1 - Introduce a new single fixed-term grade for fee-paid judges, with a duration of either 6, 8 or 10 years.

67. The MoJ has a number of reform proposals which are expected to reduce the amount of judicial capacity required. If the reform proposals are successful, it is anticipated as much as 20% less judicial capacity may be required and the number of fee paid judges required should fall proportionately and the additional costs outlined above will also be proportionately reduced.

Table 6: Assuming Reforms reduce need for judicial sitting by 20%:

	Option 1a Cost under 6 year fixed £m	Option 1b Cost under 8 year fixed £m	Option 1c Cost under 10 year fixed £m
HMCTS	3.1	2.1	1.5
JAC	0.6	0.3	0.2

Total	3.7	2.4	1.7
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68. The new fixed term proposal, which limits the number of years that an office can be held, may be less attractive to prospective judges. The proportion of judges who are successful in becoming salaried may fall because, whilst on average it takes 6 years for a fee-paid office holder to secure a salaried position, there are a number of office holders who take longer than the proposed options. Further some potential fee paid judges may never intend to apply for a salaried judicial office and so be put off from applying for the new fixed term grade if applying for salaried office is now the expectation. Taken together this may make it harder to recruit sufficient judges and maintain the quality of candidates that currently apply. Recruitment competitions would have to attract greater numbers of applicants if the ratio of fee paid and salaried judges is to be maintained. This may become more difficult over time because judges who come to the end of their term without becoming salaried would not be able to return to the pool of potential candidates.

Option 2 - introduce the ability to recruit to leadership positions for a fixed term, with accompanying temporary remuneration.

69. The details of this proposal; the timing of introduction, the scope of which offices would be included, the size of the uplift and the length of fixed term that would apply, have yet to be decided so it is not possible to establish the risks until the results of the consultation are known.

Option 3 - introduce an expectation – rather than guarantee – of the number of days fee-paid judges sit

70. Because the level of spending on sick pay is expected to decline steadily under option 3, as fee paid judges with guaranteed minimum sitting retire, if the implementation of this policy is delayed, the level of expected savings would also be reduced. The first year of savings lost as a result of a delay in implementation would be about £0.3m, steadily falling to £0.15m by the tenth year.

Option 4 - Removing the entitlement of existing fee-paid judges to claim travel expenses for journeys to their primary court or tribunal

71. The HMCTS Reforms are expected to reduce the amount of judicial sitting required. If fee-paid judicial office holders and salaried judges sit the same proportion of days that they do now, the expected level of savings would fall proportionately. So if overall sitting fell by 20% then the savings from removing this travel and subsistence would also fall by 20% to about £3.9m.

Option 5 - introduce a retirement notice period for both salaried and fee-paid judges, with a duration of either 3, 6 or 12 months.

72. None.

G. Enforcement and Implementation

73. The Lord Chancellor has the power to amend judicial office holder terms and conditions. Any changes will be implemented after a six month notice period.

H. Monitoring and Evaluation

74. This IA will be updated following the consultation responses. Depending on the responses received Option 1 and Option 2 will require legislation and will be reviewed three to five years after Royal Assent In accordance with Cabinet Office guidelines. MoJ will continuously monitor the impact of any changes to terms and conditions as a result of options 3 - 5.

I. One in Three out

75. These proposals are non-regulatory and so are out of scope of the One In Three Out framework.