

Title: Fees Increase in the United Kingdom Supreme Court Lead department or agency: UK Supreme Court Other departments or agencies: Ministry of Justice	Impact Assessment (IA)
	IA No: MOJ 104
	Date: 05/07/2011
	Stage: Final
	Source of intervention: Domestic
	Type of measure: Secondary legislation
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Summary: Intervention and Options

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

The government considers that the fee charged for Permission to Appeal (PTA) applications in civil matters by the UK Supreme Court (UKSC) does not reflect the amount of work required to process and determine. Given that civil matters now make up a higher proportion of the current workload (90% compared to the 80% estimate) than was forecast in the original funding model, the current civil PTA fee needs to be raised to properly reflect the additional workload on the system.

Government intervention is required because the Lord Chancellor is statutorily responsible for the fees instrument which prescribes fees charged in the Court.

What are the policy objectives and the intended effects?

The policy objectives are:

- to recover a greater proportion of the cost of civil business of the Court through fees
- that access to justice must not be denied

The intended effect of the policy is to ensure that the civil PTA fee in the Court is more reflective of the costs of dealing with civil PTA applications.

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

Option 0 - Do nothing – retain current fee levels at the UK Supreme Court.

Option 1 - Increase the fee for PTA in civil matters, which requires an SI amendment order.

Option 1 is the preferred option since a higher civil PTA fee will better reflect the work undertaken in dealing with these applications.

There was an additional policy option in the public consultation for giving the Lord Chancellor the power to raise all of the civil fees, without further consultation, in line with Consumer Price Index inflation. Given the level of negative responses from the consultation on this point, this has now been dropped by MoJ with the agreement of the UKSC.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 2012/13

What is the basis for this review? Duty to review. **If applicable, set sunset clause date:** N/A

Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?

Not complete

Ministerial Sign-off For final proposal stage Impact Assessments:

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

Signed by the responsible Minister:

..... Kenneth Clarke QC

Date: 14 July 2011

Summary: Analysis and Evidence

Policy Option 1

Description:

Increase the civil permission to appeal (PTA) fee from £800 to £1000 (25%).

Price Base Year 2011	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	High: 0	Best Estimate: 0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A	0.048	0.4
High	N/A	0.053	0.4
Best Estimate	Minimal	0.051	0.4

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

Transition costs to the UKSC will be negligible as what will be involved are the addition of a page addendum to the Fees Order and an update of information on the website. There would be ongoing costs including costs to UKSC users of between £47k-52k, depending on the demand reaction of UKSC users. UKSC may incur additional costs of less than £1,200 from increase fee remissions.

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

There may be small additional costs to the Legal Aid suppliers in each of the jurisdictions. It is also considered that there are positive externalities from cases heard at the UKSC, in the sense that all civil court users and the general public benefit from UKSC judgements - this benefit could decline. The legal services industry may be affected if there is a significant decline in demand for UKSC casework, although this is expected to be small and would be offset by other market opportunities.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	0.048	0.4
High	N/A	0.053	0.4
Best Estimate	Minimal	0.051	0.4

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

There would be ongoing benefits to UKSC of gross additional fee income of between £47k-£52k p.a., depending on the demand reaction of UKSC users. UKSC users may benefit from additional fee remissions of less than £1,200.

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

A reduction in the "deadweight loss to society" caused by a reduction in the amount of UK taxpayer subsidy.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

UKSC currently collects no information on the price elasticity of demand for its service. For illustrative purposes we have outlined three scenarios, based on price elasticity's of demand of -0.2, -0.4 and -0.6 (equating to a 5%, 10% and 15% reduction in volumes). While this is based on the best available evidence, there is a risk that this range is inaccurate and that the amount of gross additional income will not be within the specified range.

There is also a considerable risk that significant reductions of volumes of caseload at UKSC may also impact on fee income paid at later stages of the appeals process. Increasing the fee at the first stage of the proceedings may affect the fee income received towards the latter end of proceedings.

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

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			United Kingdom		
From what date will the policy be implemented?			15/08/2011		
Which organisation(s) will enforce the policy?			UK Supreme Court		
What is the annual change in enforcement cost (£m)?			Nil		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			N/A		
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A	Non-traded: N/A	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			Costs: Nil	Benefits: Nil	
Distribution of annual cost (%) by organisation size (excl. Transition) (Constant Price)	Micro N/Q	< 20 N/Q	Small N/Q	Medium N/Q	Large N/Q
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties¹	No	13
Economic impacts		
Competition	No	13
Small firms	No	13
Environmental impacts		
Greenhouse gas assessment	No	14
Wider environmental issues	No	14
Social impacts		
Health and well-being	No	14
Human rights	No	14
Justice system	No	14
Rural proofing	No	14
Sustainable development	No	14

¹ Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment (to Great Britain only).

References

Include the links to relevant legislation and publications, such as public impact assessments of earlier stages (e.g. Consultation, Final, Enactment) and those of the matching IN or OUTs measures.

No.	Legislation or publication
1	Constitutional Reform Act 2005 - http://www.legislation.gov.uk/ukpga/2005/4/contents
2	Fees in the United Kingdom Supreme Court - www.justice.gov.uk/consultations/fees-uk-supreme-court-consultation.htm
3	The Supreme Court Fees Order 2009 - http://www.legislation.gov.uk/uksi/2009/2131/contents/made
4	

Annual profile of monetised costs and benefits* - (£m) constant prices

Scenario 1: Price elasticity of demand = -0.2	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs	0	0	0	0	0	0	0	0	0	0
Annual recurring cost	0.038	0.053	0.053	0.053	0.053	0.053	0.053	0.053	0.053	0.053
Total annual costs	0.038	0.053	0.053	0.053	0.053	0.053	0.053	0.053	0.053	0.053
Transition benefits	0	0	0	0	0	0	0	0	0	0
Annual recurring benefits	0.038	0.053	0.053	0.053	0.053	0.053	0.053	0.053	0.053	0.053
Total annual benefits	0.038	0.053	0.053	0.053	0.053	0.053	0.053	0.053	0.053	0.053

Scenario 2: Price elasticity of demand = -0.4	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs	0	0	0	0	0	0	0	0	0	0
Annual recurring cost	0.036	0.051	0.051	0.051	0.051	0.051	0.051	0.051	0.051	0.051
Total annual costs	0.036	0.051	0.051	0.051	0.051	0.051	0.051	0.051	0.051	0.051
Transition benefits	0	0	0	0	0	0	0	0	0	0
Annual recurring benefits	0.036	0.051	0.051	0.051	0.051	0.051	0.051	0.051	0.051	0.051
Total annual benefits	0.036	0.051	0.051	0.051	0.051	0.051	0.051	0.051	0.051	0.051

Scenario 3: Price elasticity of demand = -0.6	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs	0	0	0	0	0	0	0	0	0	0
Annual recurring cost	0.034	0.047	0.047	0.047	0.047	0.047	0.047	0.047	0.047	0.047
Total annual costs	0.034	0.047	0.047	0.047	0.047	0.047	0.047	0.047	0.047	0.047
Transition benefits	0	0	0	0	0	0	0	0	0	0
Annual recurring benefits	0.034	0.047	0.047	0.047	0.047	0.047	0.047	0.047	0.047	0.047
Total annual benefits	0.034	0.047	0.047	0.047	0.047	0.047	0.047	0.047	0.047	0.047

* For non-monetised benefits please see summary pages and main evidence base section

Evidence Base (for summary sheets)

1. Introduction

- 1.1 This Impact Assessment accompanies the government response to consultation for increasing fees at the UK Supreme Court. It examines the proposal to increase the application fee for Permission to Appeal (PTA) charged at the UK Supreme Court.
- 1.2 The United Kingdom Supreme Court (UKSC) was established by Part 3 of the Constitutional Reform Act (“CRA”) 2005 and opened on 1 October 2009, replacing the Appellate Committee of the House of Lords as the highest court in the United Kingdom. UKSC is explicitly separate from both Government and Parliament.
- 1.3 UKSC hears appeals on arguable points of law of the greatest public importance, for the whole of the United Kingdom in civil cases, and for England, Wales and Northern Ireland in criminal cases. Additionally, it hears cases on devolution matters under the Scotland Act 1998, the Northern Ireland Act 1998 and the Government of Wales Act 2006. The latter jurisdiction was transferred to the Supreme Court from the Judicial Committee of the Privy Council¹.
- 1.4 An appeal to the UKSC from any order or judgement of the Court of Appeal in England & Wales or in Northern Ireland may only be brought with the permission of the Court of Appeal or of the UKSC. An application for PTA must first be made to the Court of Appeal. If that Court refuses permission, an application may be made to the UKSC. An application is made by filing an application for PTA. In certain cases, and subject to certain conditions, an appeal goes direct to the UKSC from the High Court in England & Wales or in Northern Ireland. Under sections 12 to 16 of the Administration of Justice Act 1969, appeals in civil matters may exceptionally be permitted to be made direct to UKSC from:
 - (i) the High Court in England & Wales
 - (ii) a Divisional Court in England & Wales
 - (iii) The High Court of Northern Ireland
- 1.5 These appeals are generally called ‘leapfrog’ appeals. A certificate of the High Court must first be obtained and then the permission of UKSC must be applied for and given before the appeal may proceed.
- 1.6 Section 52 of the CRA allows the Lord Chancellor with the agreement of HM Treasury to prescribe fees payable in respect of anything dealt with by the Supreme Court. The Lord Chancellor is statutorily obliged to consult certain senior judges and key organisations about the Fees Order. The fees payable at the Court and the provisions for fee exemptions are set out in The Supreme Court Fees Order 2009, an Order made by the Lord Chancellor, which came into force on the same day.
- 1.7 The MoJ consultation ran from 21 March 2011 to 13 June 2011 and received 10 responses, one of which was from a member of the public. Six of the responses were against the increase in the PTA fee, the majority of these being against the concept of fees in general. All of the responses raised objections to the wider increase in powers and so this proposal was removed from the options.

2. Problem under consideration

- 2.1 The existing fee structure was based on assumptions made using data obtained from the Appellate Committee of the House of Lords, which the UK Supreme Court replaced (an average of 228 cases per annum between 2002 and 2007, with 84% of these being civil cases). Good management of public services necessitates the maintenance of an oversight of fee levels and operational costs and examining the actual caseload and case mix for the first full year shows a variance from the baseline forecast (228 cases with 84% being civil forecast, 275 cases with 90% being civil actual). Given this

¹ The Judicial Committee of the Privy Council remains the court of final appeal for the UK overseas territories and Crown dependencies, and for those Commonwealth countries that have retained the appeal to Her Majesty in Council or, in the case of Republics, to the Judicial Committee. It is co-located with the UKSC and both Courts utilise the same Justices.

caseload / case mix variance, the background of constrained financial resources and a challenging financial settlement, it is now considered appropriate to consult on an increase to the PTA fee.

- 2.2 It is Government policy that all fees should be set, so far as possible, at levels that reflect the cost of providing that service². UKSC, as well as being the final Court of Appeal, plays an important role in the furtherance and development of UK law. Therefore, it is considered that the benefits of Supreme Court rulings accrue not only to users of the Supreme Court but more widely to all users of the Civil Justice system.
- 2.3 HM Treasury agreed with all the jurisdictions of the UKSC that the civil costs in the Supreme Court should be borne by both Supreme Court users and the generality of litigants bringing civil cases in England, Wales and Northern Ireland. In addition, a contribution was to be paid by the Scottish Government, Her Majesty's Courts and Tribunal Service (HMCTS) and the Northern Ireland Court Service towards the running costs of the Court. We do not consider that fees have been set at a level that has prohibited access to justice.
- 2.4 Having an appropriate system of fees in place is important to ensure that the Court is able to face its current financial and operational challenges and that it remains accessible to all in delivering the service that its users require. In practice this has meant that the Supreme Court recovers the cost of civil cases through a combination of fees and contributions made from HMCTS, the Northern Ireland Court Service and the Scottish Government. This agreed policy was set out in Consultation papers "*Fees in the United Kingdom Supreme court [CP 3/09]*" and is not itself a matter for further consultation.
- 2.5 In those circumstances where a party would suffer financial hardship by the payment of fees, the requirement to pay fees may be waived. The Registrar may then grant full or part remission of the relevant fee. Remission of fees is usually granted where a remission of fees has been granted in the court below. The full details of the UKSC's remission scheme are outlined under Schedule 2 of the Supreme Court Fees Order 2009 but the scheme is essentially a means tested system which also automatically grants remission if the applicant is already in receipt of certain government benefits. Evidence gained from the UKSC shows that approximately 2% of cases get partial or full remission.
- 2.6 As the table below shows, UKSC's overall costs (in all matters) are expected to fall as agreed for the four years covered by the 2010 Spending Review period. Data from the UKSC systems show that they believe caseload volumes are expected to remain broadly constant over this period, which means that the costs per unit are likely to fall through the efficiency savings which formed part of the spending review process. The table also shows the contributions received from the jurisdictions in the first year and what is expected from each of them over the next four years. This funding from the jurisdictions was also factored into the UKSC Spending Review settlement and this fees consultation exercise will not change these agreed items. Any changes to the income within the Fees & Wider Market Initiatives will be reflected in an increase that budget line with the corresponding reduction in Net Running Costs.³ The figures used to reflect income received from fees reflects the current fee levels and does not reflect the revised fee level of Permission to Appeal, the subject of this Impact Assessment.

² Paragraph 6.12, HM Treasury, 'Managing Public Money', http://www.hm-treasury.gov.uk/d/mpm_ch6.pdf

³ UKSC fee income reflected in the table is based on current fees.

Table 1: UKSC actual operating costs for 2009-10 and HMT / MoJ approved operating nominal costs for 2010-15

	Oct 2009 to Sept 2010 (ACTUAL)	Apr 2010 to Mar 2011	Apr 2011 to Mar 2012	Apr 2012 to Mar 2013	Apr 2013 to Mar 2014	Apr 2014 to Mar 2015
	£,000	£,000	£,000	£,000	£,000	£,000
Judicial Salary & Expenses	3,600	3,930	3,930	3,930	3,630	3,630
Other costs	9,641	8,883	8,884	8,956	8,792	8,778
Total Gross Expenditure	13,241	12,813	12,814	12,886	12,422	12,408
Contributions from Jurisdictions ⁴	(5,969)	(5,969)	(5,969)	(5,969)	(5,969)	(5,969)
Fees & Wider Market Initiatives ⁵	(967)	(538)	(809)	(1,122)	(872)	(1,062)
Total Income	6,936	6,507	6,778	7,091	6,841	7,031
Net Running Costs⁶	6,305	6,306	6,036	5,795	5,581	5,377

2.7 The changes in value within the Fees & Wider Market Initiative income budget line above is due to changes in the application of different Wider Market Initiatives and does not, as mentioned elsewhere in paragraph 2.6, take into account the changes which would be brought about by this fee change.

2.8 Given the short time that the UKSC has been in existence, the statistically 'low' numbers of cases that it deals with in any particular year and the lack of supporting management information on these cases, it has not been possible to produce a robust impact assessment. This matter will be discussed further with the UKSC as part of the lessons learnt approach, which will be used to facilitate the develop the process for undertaking the formal review of the 2009 UKSC Fees Order, which includes both the level of Fees & the remission system, which is due to be undertaken in 2012/13.

3. Rational for intervention

3.1 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 clear 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 reasons of fairness (e.g. to reallocate goods and services to the more needy groups in society).

3.2 Positive externalities exist when the marginal social benefit of consumption of a good exceeds the marginal private benefit (i.e. consumption of a good generates external benefits that be under-valued by the market). Where positive externalities exist, the good or service in question may be under-consumed if users pay the full cost of the service. In this context, the socially optimal outcome may be where the government subsidises the price of that service. The government considers that there are positive externalities from the cases heard at the UKSC as the benefits accrue not only to users of UKSC but more widely to users of the civil justice system.

3.3 Notwithstanding this argument, it is considered that there may be efficiency arguments for raising fees. In the context of constrained financial resources, it is felt that the relative subsidy that users currently enjoy, should be reduced. While the Government does not seek to remove public subsidy

⁴ This concerns the agreed contribution paid by the Scottish Government, HMCTS and the Northern Ireland Court Service towards the running costs of the Court.

⁵ Fees concerns the direct income received from Appellants submitting their appeals. Wider Markets Initiatives represents financial opportunities to deliver ongoing income through the utilisation of Supreme Court assets.

⁶ Net running costs are met from central income received from HM Treasury following the 2010 spending review process.

for UKSC, it is considered that where users are able to, they should pay a larger contribution towards the cost of Permission-to-Appeal (PTA) applications.

4. Description of options considered

Option 0: “Do-nothing”/ Base Case

- 4.1 Under the “do-nothing” base the PTA fee would remain unchanged from the level set out in the 2009 UKSC fees order (£800) and the UKSC funding and caseload / case mix would be unaffected.
- 4.2 In the period October 2009 to September 2010, fees & wider market initiatives accounted for £976,000 against a cost base of £13.2 million⁷ (approx 8% cost recovery).
- 4.3 Assuming that the UK’s general price level continues to rise over time, then this would mean that fees would fall in real terms. This would mean that increasing amounts of subsidy would therefore be required from the Exchequer to help finance the same volume of UKSC services in future years even though the average cost per case is expected to fall over the CSR10 period, in light of efficiency savings required as part of the 2010 spending review.
- 4.4 Because the do-nothing option is compared against itself its costs and benefits and necessarily zero, as is its Net Present Value (NPV)⁸.

Option 1: Increase permission to appeal (PTA) fees by 25%

- 4.5 It is proposed that the fee charged for applications for Permission to Appeal (PTA) be increased to better reflect the amount of work undertaken by the Justices and their staff to process and determine the PTAs. All other fees charged at the Court are to remain the same.

Table 2: UKSC current and proposed fee schedule

APPLICATION FOR PERMISSION TO APPEAL	Current fee	Proposed fee
File Application for Permission	£800	£1000
File notice of objection (Respondent)	£160	£160
APPEAL		
Filing notice of intention to proceed with appeal (following grant by UKSC of permission to appeal)	£800	£800
Filing notice of appeal (where permission granted by court below or not required)	£1600	£1600
Filing acknowledgement (respondent)	£320	£320
Filing Statement and appendix. Filing notice of appeal is ready to list.	£4820	£4820
OTHER FEES		
Review of Registrar’s decision	£1,500	£1,500
Application to intervene	£800	£800
Other procedural applications	£350	£350
Opposition to procedural applications	£150	£150

⁷ Total gross costs including judicial salary & expenses, depreciation and other costs, this figure is total income gross of any fee remissions

⁸ The Net Present Value (NPV) shows the total net value of a project over a specific time period. The value of the costs and benefits in an NPV are adjusted to account for inflation and the fact that we generally value benefits that are provided now more than we value the same benefits provided in the future.

Copying charge (documents up to 10 pages)	£5	£5
Copying each subsequent page	50p each	50p each
Copying to CD or other electronic format	£5	£5
Certified documents (other than final order for which there is no charge)	£20	£20
Application for detailed assessment of costs	2.5% Sum Claimed	2.5% Sum Claimed

5. Costs and Benefits of Option 1

Costs to UKSC users

5.1 UKSC users could be individual litigants, businesses, public sector or non-profit organisations. The total additional cost to court users of the increased PTA fees is estimated to be approx £47k-£52k for a full financial year (based on part year actual and remaining year forecast volumes for 2010/11), compared to the base case.

5.2 The monetary costs to UKSC users depend on how these users react to fee changes – other things being equal, we would expect fewer applications for PTA as the price increases. Price elasticity of demand is used in economics to show the responsiveness of the quantity demanded of a good or service to a change in its price alone. The demand for the good can either be elastic (if price increases by 1%, demand decreases by more than 1%), unit-elastic (if price increases by 1%, demand decreases by 1%) or inelastic (if price increases by 1%, demand decreases by less than 1%).

5.3 While UKSC does not estimate the price elasticity of demand for its services, there is some available evidence to suggest that the price elasticity of demand for legal services as a whole is approx -0.4⁹ (relatively inelastic). Given the uncertainty surrounding this figure, we have calculated the monetary costs to UKSC users over a range of price elasticity's of demand, as specified below.

Table 3: Costs to users of the United Kingdom Supreme Court

Price elasticity of demand	% change in PTA volumes	New PTA volumes	Additional cost to UKSC users
-0.2	-5%	261	£52,250
-0.4	-10%	248	£49,500
-0.6	-15%	234	£46,750

5.4 Those users on low incomes who are not in receipt of legal aid funding are entitled to a fee remission (full waiver or partial discount) – since the UKSC has opened, approx 2.2% of cases have received a full or partial fee remission. There are three types of remissions giving a full or partial discount according to the applicant's income and other characteristics¹⁰. Those users entitled to a full remission will not be affected by these proposals. Those users entitled to a partial remission may see an increase in the court fees payable to UKSC and may be affected in a similar way to paying users.

5.5 As a result of this proposed increase in the PTA fee, some users may address their disputes in different ways. They may pay for alternative resolution services (ADR) which are not court-based, may seek to resolve issues by themselves without reference to courts, may pay for services which support self-resolution, or may decide not to tackle the issue at all. Those users who decide not to issue proceedings may incur costs if their legal dispute remains unresolved. However, given that cases which proceed to the UKSC have normally been through at least two other levels of lower court hearing, it is felt unlikely that an ADR solution would be applicable or chosen.

⁹ Gwartney, J.D., Stroup, R.L., Sobel, R.S., MacPherson, D., Economics: private and public choice, 2008, p.429

¹⁰ Remission 1 is a full remission based on whether the applicant is in receipt of a passported benefit, remission 2 is a full remission based on gross annual income, taking into account the number of dependent children and whether the applicant has a partner or not, remission 3 is a partial remission based on monthly household disposable income.

Transitional Costs to UKSC:

5.6 There would be minimal costs to the UKSC as an addition of a page addendum to the Fees Order and an update of information on their website will be required.

Ongoing Costs to UKSC:

5.7 Remissions are fee waivers or discounts for those on lower incomes. The cost of the remissions scheme (in terms of foregone fee income) is financed by a taxpayer subsidy provided to UKSC. Increasing fees causes the value of this subsidy to rise as more income is foregone through a full or partial fee remission. Further details of the remissions scheme is outlined in paragraph 1.7.

5.8 Since the Court was opened, approximately 2.2% of cases at UKSC received a full or partial fee remission. It is expected that there may be an increase in the value of fee remissions - this impact is likely to be approx £1,200 p.a. or less. The remission scheme will continue to provide a robust means of access to justice as court users who face financial hardship because of fees can apply for the fee to be waived in full or part.

5.9 As the fee structures have not changed, there should not be any additional ongoing costs for the administration of the increased fees.

5.10 Although research evidence suggests that demand would not be significantly reduced by these proposals¹¹, if volumes were to be significantly affected, UKSC may incur reduced income from fees later in the appeal process which, by the nature and duration of the case might not manifest within the same financial year. It is considered that the likelihood of this is very low therefore this impact has not been quantified. However, the impact of these changes will be monitored as part of the ongoing formal review process in order to assess whether there has been any impact on case volume and the associated fee income.

Costs to Legal Aid Schemes

5.11 Legal aid is a scheme that helps people pay for legal advice and is administered in England and Wales by the Legal Services Commission, in Scotland by the Scottish Legal Aid Board and in Northern Ireland by the Northern Ireland Legal Services Commission. Legal aid under each of these schemes includes the payment of court fees. Court fees are paid upfront by legal aid solicitors for clients who are in receipt of a certificate that has been issued under the respective funding code, and then claimed back from the administering body when the case is finished.

5.12 MoJ analysis suggests that approximately 28% of the population is eligible for some type of legal aid. Legal aid is not available for all types of case, and many civil proceedings are not within scope for legal aid funding. For this reason, we expect the impact of these proposals on the legal aid budget to be minimal.

Costs to legal services professionals:

5.13 There may also be a cash flow impact on legal services firms who have to pay court fees upfront and claim them back as a disbursement from clients or the LSC when the case is finished. However, as these fees apply only in a limited number of jurisdictions, any impact on the legal profession is expected to be small and would be offset by other market opportunities.

Social costs:

5.14 UKSC, as well as being the final court of appeal, plays an important role in the furtherance and development of UK law. There are positive externalities from cases heard at UKSC, in the sense that all court users and the general public are affected by the outcomes of appeals and cases heard at UKSC. If the volumes of UKSC cases were to fall as a result of the increase in PTA fees, then by implication the benefits that all court users and the general public currently enjoy would be reduced.

¹¹ "What's cost got to do with it? The impact of changing court fees on user" was carried out by Opinion Leaders Research and was published on 27 June 2007. It is available online at: <http://webarchive.nationalarchives.gov.uk/http://www.justice.gov.uk/publications/research280607.htm>

Benefits of Option 1

Transitional benefits

5.15 No transitional benefits have been identified

Ongoing benefits

Benefits to UKSC

5.16 The benefits to UKSC mirror the costs to UKSC users. UKSC would benefit from an increase in gross fee income of £47k-£55k in a full year (in 2011 prices - not accounting for any rise in remissions). While UKSC do not currently collect specific price elasticity's of demand for its services – there is some evidence to suggest that the price elasticity of demand for legal services as a whole is approx -0.4. To account for the uncertainty, we outline the gross additional fee income to UKSC users under 4 scenarios with different price elasticity's of demand. These scenarios equate to a 5%, 10% and 15% reduction in case volumes.

Table 5: Gross additional fee income for varying changes in demand, 2011 prices

Price elasticity of demand	% change in case volumes	New volumes	Additional fee income to UKSC to UKSC users
0	0%	275	£55,000
-0.2	-5%	261	£52,250
-0.4	-10%	248	£49,500
-0.6	-15%	234	£46,750

5.17 While we expect the total benefit to UKSC to be within the range presented above, these figures are highly uncertain.

Benefits to UKSC users:

5.18 The benefits to UKSC users closely mirror the costs to UKSC. Remissions are fee waivers or discounts for those on lower incomes. Further detail of the current UKSC remissions scheme is available in paragraph 2.22. Applicants/litigants in receipt of remissions 1 & 2 will continue to be eligible for a full fee remission and the number of those eligible for a full remission should not change as a result of these fee increases. Eligibility for remission 3 depends on the level that the fee is set at – the higher the fee; the greater the number of people would be eligible to claim a partial discount under remission 3. Since the Court was opened, of those fees charged at UKSC approximately 2.2% received a full or partial fee remission. It is expected that there may be an increase in the value of fee remissions - this impact is likely to be approx £1,200 p.a. or less.

Benefits to society:

5.19 Given that UKSC services (as a whole) are currently being offered below the full cost of providing them, increasing fees would reduce the level of subsidy that taxpayers currently provide to users of the courts and probate registries. This represents a net gain for society overall because the over-consumption of services and associated “deadweight loss” falls as fee rates move closer to the levels implied by full cost-recovery. Unfortunately, uncertainty around the underlying customer demand for these court services as fee rates change means that we cannot estimate the monetary net gain to society.

Enforcement and Implementation

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

Net impact of Option 1:

- 5.21 The increase in fee rates reduces the subsidy paid by taxpayers to court users, other things being equal. These proposals would therefore represent a transfer of income from UKSC users to taxpayers.
- 5.22 The increase in fees would not impact those who are entitled to means tested benefits and will have greatest impact on those individuals that are outside eligibility for legal aid or a fee remission. In the case of the proposed PTA increases, the increased fees may encourage court users to resolve issues without using the court system, potentially resulting in a reduced volume of court cases. However, given the relatively small increases to fees, we do not expect the volumes of cases to be significantly affected.
- 5.23 Based on the assumptions set out above, the quantifiable net impact on the UK of this proposal is zero as the policy effectively involves a transfer payment from Court users to UK taxpayers.

6. Assumptions / Risks

- 6.1 In the main body of the options analysis above, the volumes of fees applications have not been adjusted to reflect a reduction in demand for court services that may result from increasing fee levels. The main issue at stake is whether the proposed fee increases would lead to the expected increases in fee income. Other things being equal, the own price elasticity of demand measures the responsiveness of customer demand to a change in the price of the good in question.
- 6.2 It is especially important to determine whether the demand for the good is elastic (if price increases by 1%, demand decreases by more than 1%), unit-elastic (if price increases by 1%, demand decreases by 1%) or inelastic (if price increases by 1%, demand decreases by less than 1%). This is because the impact on revenues will differ: if the demand is price-elastic, then revenues will decrease if prices increase; but if it is price-inelastic, then revenues will increase.
- 6.3 The impact of fee increases in the volume of court cases will depend on a number of factors, such as:
- The availability of substitutes – if there is no close substitute to the service provided by the court (or there is a perception that there is no close substitute), then demand will be less elastic.
 - The nature of the claim – if the service provided is a necessity, then demand will be less elastic.
 - Fees as a proportion of total cost – if the court fees are a substantial proportion of the total cost of going to court (i.e. the cost of court fees and legal representation), then it is more likely that the court fees will have a big impact on the volume of court cases.
 - The funding of the applicant – if the applicant is privately funded, then they must bear the full costs of the fees, and the applicant will take into account the cost of the court fee when deciding whether to issue a claim. The privately funded applicant might substitute away from court and towards cheaper alternatives such as mediation. On the other hand, if the applicant is legally aided, the magnitude of the court fee will not impact on the likelihood of issuing a claim, as they will not be liable for the cost.
 - The transferability of court fees – if the fees are non-transferable and the cost must be borne by the claimant independently of whether they win the case, then the fees are more likely to impact on the volume of court cases.
- 6.4 Taking the above factors into consideration and after undertaking some initial modelling work to estimate the responsiveness of civil court volumes to fee changes, MoJ have found no statistically significant effect of increasing fees on civil court volumes. While there is some evidence that the price elasticity of demand for legal services is approx -0.4¹² (relatively inelastic), the UKSC collects

¹² Gwartney, J.D., Stroup, R.L., Sobel, R.S., MacPherson, D., Economics: private and public choice, 2008, p.429

no specific information on the price elasticity of demand for its services. We therefore apply a range of price elasticity's of demand the impact of increased fees on volumes to capture possible price sensitivity. These equate to caseload reductions of 0%, 5%, 10% and 15%.

6.5 The best available evidence therefore seems to suggest that these fee changes may cause volumes to fall by as much as 15%, although this is currently considered to be unlikely. However, MoJ recognise that there are still risks that applications for PTA will prove to be more price sensitive than we have outlined. In other words, revenues may fall because case volumes could decline by proportionately more than the fee level increases.

6.6 The main risk to the proposals is that the court services in question will prove to be price elastic. In other words, revenues will fall because case volumes will decline by proportionately more than the fee level increases.

6.7 There is also a risk that overall fee income could be affected if caseload is significantly reduced. This is because the fees paid at later stages of the appeal process may fall. It is considered that the likelihood of this risk is low and the magnitude has not been quantified.

7. Direct costs and benefits to business calculations

7.1 There is no effect on the direct costs and benefits to business calculations as this is an amendment order and therefore not subject to One In, One Out (OIOO) principles.

8 Wider Impacts (Formally Specific Impact tests)

8.1 Equality Impact Assessment

An Equality Impact Assessment initial screening has been completed and is attached at Annex 2.

8.2 Competition Assessment

The main sectors affected by the proposed policy are solicitors and individuals – we have considered the four key questions from the Office of Fair Trading Impact Assessment guidance for policymakers (August 2007) and assess that the proposed policy would have no disproportionate impact on solicitors or individuals. The conclusion is therefore that there are no anticipated impacts on competition, and hence that, a full competition assessment is not required. It is not considered that there would be any significant impact on competition.

8.3 Small Firms Impact Test

In assessing the potential impact of these proposals on small firms we have followed the Department for Business, Innovation and Skills' 'small firms impact assessment guidance' (January 2009). These proposals do not impose any new regulations¹³ on small firms, who are already obliged to pay court fees if they apply for permission-to-appeal. Small firms who apply for permission-to-appeal at the UKSC will incur extra expense from increased fees. Where a small firm is a defendant who loses a case, costs (including any court fees paid) may be awarded against them. Consequently, if fees at the UKSC are increased then overall costs awarded against losing defendants may rise. However, it is considered that litigation remains a choice for a small firm, with costs recoverable from the other side if they lose. Furthermore, it is considered that the fees covered by these proposals are a small proportion of the legal costs which the firm will incur in bringing a case at the UKSC, and any impact will be minimal.

¹³ Regulation being defined as a rule or guidance with which failure to comply would result in the regulated entity or person coming into conflict with the law or being ineligible for continued funding, grants and other applied for schemes. This can be summarised as all measures with legal force imposed by central government and other schemes operated by central government.

There are difficulties in estimating the precise impact on small firms, since currently no data are collected on the characteristics of users of the UKSC.

It is not considered that there is any scope to provide court fee exemptions for small or micro-firms. HM Treasury's Managing Public Money guidance states that there should not be different fee-charging regimes for corporate or individual users unless permitted or required by primary legislation. Moreover, one of the objectives of these proposals is that fees should reflect the cost of the services provided. Providing exemptions for businesses to apply for permission-to-appeal would increase the burden on individual litigants at the High Court.

8.4 Carbon Assessment

It is not considered that these proposals would lead to a change in carbon emissions.

8.5 Other Environmental Impacts

We do not expect that the proposal will have any impact on noise pollution, landscape, wildlife, air quality or any other environmental impact.

8.6 Health Impact Assessment

We have identified no evidence that our policy will have a significant impact on human health by virtue of its effects on the wider determinants of health: a significant impact on any lifestyle related variables or that it will place a significant demand on any health and social care services. On this basis we do not believe a full health impact assessment is required.

8.7 Human Rights

These proposals are compliant with Human Rights Act (1998).

8.8 Justice Impact Test

The impact on the justice system has been assessed as part of the options analysis. The LSC fund meets the cost of court fees for those in receipt of legal aid. It is anticipated that there may be an increase to legal aid costs but that this will be minimal given that legal aid for civil non-family proceedings is limited.

8.9 Rural proofing

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

8.10 Sustainable Development

It is not considered that there would be any impact on sustainable development from these proposals.

8.11 Privacy Impact Test (an MoJ Specific Impact Test)

It is not considered that these proposals will have any impact on the privacy of personal data as defined by the Data Protection Act 1998.

9 Summary and preferred option with description of implementation plan

9.1 The preferred option (as noted above) is option one, the option to increase the Permission to Appeal fee to £1,000 but, given the strength of feeling in the consultation and the fact that a full review of the UK Supreme Court's fee structure is due to be undertaken in 2012/13, it has been decided to not proceed with the increase in powers for the Lord Chancellor to increase any UKSC fees in line with CPI inflation as required without further consultation.

9.2 The Statutory Instrument has been drafted and will be laid before Parliament on week commencing 11 July, to come into force on the 5 August 2011.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. If the policy is subject to a sunset clause, the review should be carried out sufficiently early that any renewal or amendment to legislation can be enacted before the expiry date. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p>Basis of the review:</p> <p>There will be ongoing monitoring of the fees policy at the UKSC in light of changes within the justice system across the United Kingdom. In addition there is a formal review cycle, whereby the UKSC fees structure is reviewed at least once every 3 years. The next review is due to be held during 2012/13.</p>
<p>Review objective:</p> <p>To ensure there is proper balance between the costs borne by users of the Court and those by the generality of those using the civil justice system, while maintaining access to justice.</p>
<p>Review approach and rationale:</p> <p>A monitoring framework of fee levels will be established including: the costs of dealing with civil cases at the Court, the impact of the fee remission policy, and any impact on court usage.</p>
<p>Baseline:</p> <p>The current civil caseload of the Court is 275. This represents 90% of the Court's business.</p>
<p>Success criteria:</p> <p>The policy will be successful if the proposals realise fee income within the range specified in the main body of the impact assessment above.</p>
<p>Monitoring information arrangements:</p> <p>The UKSC has its own workload measurement system that will be used to provide ongoing monitoring, although MoJ will work with them in order to ensure that it is robust enough to meet the needs of those who deal with the impact of policy changes.</p>
<p>Reasons for not planning a PIR:</p> <p>N/A</p>

Annex 2: Equality Impact Assessment (EIA)

1. Name of the proposed new or changed legislation, policy, strategy, project or service being assessed.

The Supreme Court Fees (Amendment) Order 2011

2. Individual Officer(s) & unit responsible for completing the Equality Impact Assessment.

Philip Staker, Constitution & Judiciary Division

3. What is the main aim or purpose of the proposed new or changed legislation, policy, strategy, project or service and what are the intended outcomes?

Aims/objectives	Outcomes
To more properly reflect the cost of processing an application for Permission to Appeal to the UK Supreme Court	The application fee is raised from £800 to £1,000

4. What existing sources of information will you use to help you identify the likely equality impacts on different groups of people?

(For example statistics, survey results, complaints analysis, consultation documents, customer feedback, existing briefings, submissions or business reports, comparative policies from external sources and other Government Departments).

The Equality Impact Assessment produced for the The Supreme Court Fees Order 2009, The Equality Impact Assessment produced for the Civil Court Fees 2008 (a summary of which was published within the public consultation document for this legislative change) and the results of the 2007 MoJ research paper "What's cost got to do with it? The impact of changing court fees on user".

5. Are there gaps in information that make it difficult or impossible to form an opinion on how your proposals might affect different groups of people. If so what are the gaps in the information and how and when do you plan to collect additional information?

Note this information will help you to identify potential equality stakeholders and specific issues that affect them - essential information if you are planning to consult as you can raise specific issues with particular groups as part of the consultation process. EIAs often pause at this stage while additional information is obtained.

No

6. Having analysed the initial and additional sources of information including feedback from consultation, is there any evidence that the proposed changes will have a **positive impact** on any of these different groups of people and/or promote equality of opportunity?

Please provide details of who benefits from the positive impacts and the evidence and analysis used to identify them.

No

7. Is there any feedback or evidence that additional work could be done to promote equality of opportunity?

If the answer is yes, please provide details of whether or not you plan to undertake this work. If not, please say why.

No

8. Is there any evidence that proposed changes will have **an adverse equality impact** on any of these different groups of people?

Please provide details of who the proposals affect, what the adverse impacts are and the evidence and analysis used to identify them.

There is no evidence that the increase in the Permission to Appeal fee will change the findings of the Equality Impact Assessment for the substantive fee order completed in 2009.

9. Is there any evidence that the proposed changes have **no equality impacts**?

Please provide details of the evidence and analysis used to reach the conclusion that the proposed changes have no impact on any of these different groups of people.

There is no evidence which leads me to believe that the increase in the Permission to Appeal fee will change the findings of the Equality Impact Assessment for the substantive fee order completed in 2009.

10. Is a full Equality Impact Assessment Required? Yes No

If you answered 'No', please explain below why not?

NOTE - You will need to complete a full EIA if:

- the proposals are likely to have equality impacts and you will need to provide details about how the impacts will be mitigated or justified
- there are likely to be equality impacts plus negative public opinion or media coverage about the proposed changes
- you have missed an opportunity to promote equality of opportunity and need to provide further details of action that can be taken to remedy this

If your proposed new or changed legislation, policy, strategy, project or service involves an Information and Communication Technology (ICT) system and you have identified equality impacts of that system, a focused full EIA for ICT specific impacts should be completed. The ICT Specific Impacts template is available from MoJ ICT or can be downloaded from the Intranet at: <http://intranet.justice.gsi.gov.uk/justice/equdiv/equal-impact.htm>, and should be referenced here.

Given that a full EIA was completed for the substantive legislation, it is felt that no new EIA is required for this single fee increase.

11. Even if a full EIA is not required, you are legally required to monitor and review the proposed changes after implementation to check they work as planned and to screen for unexpected equality impacts. Please provide details of how you will monitor evaluate or review your proposals and when the review will take place.

Monitoring of the impact of this fee increase will fall to the UK Supreme Court and will form part of the more formal review of the UKSC Fees Order, due to be done in 2012/13, which will include the completion of a new detailed EIA.

12. Name of Senior Manager and date approved

You should now complete a brief summary (if possible, in less than 50 words) **setting out which policy, legislation or service the EIA relates to, how you assessed it, a summary of the results of consultation, a summary of the impacts (positive and negative) and, any decisions made, actions taken or improvements implemented as a result of the EIA.** The summary will be published on the external MoJ website.

This statutory instrument aims to increase the Permission to Appeal fee in the UK Supreme Court from £800 to £1,000. This increase is deemed necessary due to the Government's commitment to charge fees which fairly reflect the cost of providing a service, in the situation where there has been a significantly higher than forecast civil workload which has required additional staff and judicial resource to manage.

Name (must be grade 5 or above): Clare Sumner

Department: Law & Rights Directorate, Judicial Policy Group

Date: 05 July 2011

Note: The EIA should be sent **by email to anthony.shepherd@justice.gsi.gov.uk of the Corporate Equality Division (CED), for publication.**