

Summary: Analysis & Evidence

Policy Option 2

Description: Reform the rights of appeal and introduce non-suspensive appeals

FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: £219m

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	£5m	£42m

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

The key monetised cost is reduced income to Her Majesty's Courts and Tribunal Services (HMCTS) due to decreased appeal receipts. (£42m PV over ten years)

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

The Administrative Review process will incur one-off set-up and training costs for the Home Office. However, the ongoing costs are likely to be negligible as the fee for the AR will be on a cost recovery basis. There are also non monetised costs of increased air fares where appeals are made non suspensive and costs may also be incurred from increased Judicial Reviews as a result of the policy change.

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	£31m	£261m

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

The key monetised benefits are savings in appeals costs for the Home Office (£73m PV over ten years) and HMCTS (£187m PV over ten years) due to a decrease in the volume of appeals. (£261m PV over ten years)

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

The key non monetised benefits are reduced upper tribunal appeal costs for the Home Office and HMCTS. The policy change aims to reduce the time for an outcome to be decided due to the AR process. Volume of appeals could fall due to non suspensive appeals, as people sent back to their country of origin may not make an appeal. In addition, there could be detention space savings.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5%
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Assumptions were made about the amount of cases that retain their rights of appeal and are not part of the Administrative Review process. It is assumed that appeal volumes would stay broadly similar to 2012/13 across the ten year appraisal period. Sensitivity analysis has been carried out on the volume of appeals received and determined and also on the amount of Judicial Reviews that may arise.

BUSINESS ASSESSMENT (Option 2)

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

Evidence Base (for summary sheets)

A. Strategic Overview

A.1 Background

The current statutory scheme for immigration appeals is primarily contained in Part V, Nationality, Immigration and Asylum Act 2002. Section 82 provides that where an immigration decision is made a right of appeal will arise and sets out which decisions amount to an immigration decision for the purposes of appeal rights. Depending on the nature of the decision and the grounds raised in the appeal, the appeal will take place either while the appellant remains in the UK or only once the appellant has left the UK.

An appeal right arises on each occasion that an immigration decision is made, subject to specific exceptions for late, repetitious or unmeritorious claims, and an individual may be entitled to multiple appeal rights before being removed or deported from the UK. For example, both the making of a deportation order and the refusal to revoke a deportation give rise to a right of appeal although they are effectively two aspects of the same decision.

There is no appeal right specifically against the refusal of an application for asylum, humanitarian protection or where human rights or European Union (EU) rights are raised. These fundamental rights can only be raised as grounds of appeal where an immigration decision, as defined in the legislation, has been made. The Government believes that in the context of ensuring that appeal rights are available where fundamental rights are engaged but not made available where a more appropriate remedy is available, it is a more intuitive and logical approach to restructure appeal rights so that refusals of applications for asylum or those raising human rights or EU rights give rise to a right of appeal, rather than a technical immigration decision.

It would also be appropriate for some of these appeals to be heard out-of-country where the circumstances of the case (for example, some private and family life cases) do not require an appeal that suspends removal.

The Government believes that the appeals framework is more complex than necessary and creates the potential for delay, creating opportunities for individuals to exploit the potential for multiple appeals and making it more difficult and time-consuming to remove or deport individuals from the UK. Furthermore, the current statutory scheme does not reflect the Government's priorities or provide the most appropriate and effective remedies for refused applicants.

Currently an individual's remedy against an application refused in error is to appeal against that refusal. We do not believe that a costly, complex and lengthy appeal process is the most appropriate way to resolve factual errors. Appeal rights are appropriate for legally and factually complex issues that engage fundamental rights, namely EU free movement rights, human rights, asylum and humanitarian protection. We need to reform the appeals framework to reflect these priorities.

A.2 Groups Affected

Those affected by the policy include:

Government departments and agencies, including the Home Office which is responsible for administering the immigration decisions and HM Courts and Tribunals Service (HMCTS) which administers visa appeals. In addition, there may be a second order impact on businesses, lawyers and education providers.

B. Rationale

The current immigration appeals framework is complex and results in appeal rights arising where an alternative remedy would be swifter, more appropriate and economical.

The potential for multiple appeals creates the risk that an extended appeals process is exploited by those seeking to remain in the UK. It can cause delay in an individual being removed.

The current appeals structure does not generally provide an appeal directly against a decision on an asylum, humanitarian protection or human rights claim. Instead, appeal rights arise where one of 14 specified immigration decisions are made and the appeal can be brought on one or more of 7 specified grounds, which include asylum and human rights. This can mean that asylum or human rights is raised for the first time on appeal rather than by application to the Secretary of State, making the Tribunal the primary decision maker on such claims. The Secretary of State should be the primary decision maker in these claims and therefore reform is needed.

Furthermore, the majority of Points Based System appeals (economic migrants and students) are currently allowed on the basis of a factual error by the decision maker. A full-merits appeal, which can be prolonged and expensive for both the applicant and the Government, is not the appropriate mechanism for resolving such errors.

There is no legal requirement for an in-country appeal if there would be no risk of serious irreversible harm resulting from removal pending appeal. Some human rights cases will still require an in-country appeal but the Government takes the view that where an in-country appeal is not required such an appeal should not be provided. A power to certify that such an appeal should be heard out-of-country is in line with our international obligations, will bring forward the date of removal, will save detention costs and will help reduce the opportunities for abuse of the appeals system.

The Government therefore believes that reforming the appeals framework, to allow appeals only against the refusal of an application relating to fundamental rights and putting in place an administrative process to correct errors in decision making, would create a more streamlined system, ensuring swifter resolution of disputes relating to refused applications by the most appropriate means for the dispute in question. A power to require certain appeals to take place after the individual has left the country where no serious irreversible harm would result from that departure supports and develops these aims. A less protracted appeals process is preferable for applicants and for the Government, leading to individuals being either granted leave or becoming eligible for removal from the UK earlier.

C. Objectives

The policy objective is to reform the appeals system in order to:

- provide an appeal right against refusal only where an appeal is the most appropriate remedy, in general terms against the refusal of claim for asylum, humanitarian protection, EU rights or human rights;
- prevent multiple appeal rights arising;
- provide a mechanism for more appeals against refusals to be heard out of country; and
- increase public confidence in the immigration system by reducing the opportunity for exploiting the complexity of immigration appeals to prolong time spent in the UK.

D. Options

Option 1 is to make no changes (do nothing).

Option 2 is to reform immigration appeal rights to provide a right of appeal only in relation to human rights, asylum, humanitarian protection or EU free movement rights. It is also to enable more appeals to be heard out of country.

E. Appraisal (Costs and Benefits)

Objective function

In January 2012, the MAC published a report on the impacts of migration and recommended that migration policy impact assessments should concentrate on the welfare of the resident population. The NPV in this impact assessment therefore aims to maximise the welfare of the legally resident population - defined as those formally settled in the UK or nationals of the UK. The NPV should include the effects from any change in fiscal, public service, consumer and producer surplus and dynamic effects where practical and appropriate, but should exclude forgone migrant wages (net of taxes). In line with this, the impact assessment will not consider impacts on the migrant where their right of appeal is removed.

General Assumptions and Data

This IA covers a 10-year period from 2014/15, in line with guidance from the Better Regulation Executive (BRE). The Immigration Bill is expected to obtain Royal Assent during 2014. We propose to fully implement the scheme outlined in this IA from October 2014, but will be looking to introduce priority aspects of the scheme as soon as operationally feasible. The IA assumes that implementation will occur in October 2014. This IA aims to set out the best estimates of the policy impacts at the final stage of policy development, using the available evidence. Any key uncertainties are highlighted and key assumptions are tested in the sensitivity analysis section to show the range of potential impacts.

- All costs and benefits are compared against the 'Do Nothing' (Option 1) case.
- Figures set out in the IA are indicative; the Home Office and Ministry of Justice will continue to work towards confirmed figures for budgetary purposes.
- The Home Office does not forecast levels of migration or appeals. Thus, appeals volumes are assumed to remain constant at 2012/13 levels for the period assessed in the IA.
- A first tier tribunal considers initial appeal cases, if these cases are then dismissed the appellant can potentially take the case to an upper tier tribunal.
- Additional costs to HCMTS may arise for which figures at present do not capture with 100% accuracy. Current assumptions and estimations allow for the possibility of an increase in JR volumes and do not account for behavioural responses that could determine future efficiencies. The Home Office has agreed to undertake a longer-term analysis with the MoJ to clarify any potential costs incumbent on HMCTS.

Table 1: First Tier Tribunal, Appeal case Receipts (Immigration and Asylum Chamber) – excluding asylum and family visit visas

	2012/13 Annual Total
Managed Migration	30,486
Entry Clearance	26,500

Deport and others	1,844
Total	58,830

Source: MoJ

- Where a claim is made on the basis of Article 8 (right to family life), other human rights, asylum, humanitarian protection and EU free movement rights, the refusal of that claim will have a right to appeal unless the case in question relates to an overstayer, where there is no right of appeal.
- It is not possible to estimate how many of the total receipt volumes in the table above will fall under these categories. Ministry of Justice (MoJ) management information shows that 32%¹ of managed migration appeals are raised on human rights grounds. Therefore, approximately 9,750 appeals relate to human rights cases and will retain the right of appeal. This gives a volume of 20,750 managed migration receipts that would no longer have a right of appeal.
- Data is not collected regarding the proportion of appeals for the entry clearance and deport categories are raised on the basis of human rights. It is assumed that those applying for a visa on the basis of family reunification would retain the right of appeal under Article 8. Visa applications on family grounds have been used to give an estimate of how many of the entry clearance receipts would still keep their rights of appeal. Table 2 below shows the proportion of Entry Clearance family visa applications to all visa applications (excluding visitors and points based system (PBS) applications - as PBS entry clearance visa refusals do not currently have a right of appeal).

Table 2: Proportion of applications made relating to Article 8 Cases in 2012/13

	Total Visa applications	Amount of visas relating to Family unification reasons	Proportion
Entry clearance	209,400 ²	75,600	36%

Source: HO Analysis

- Applying these proportions to the volumes from Table 1, an assumption on the volume of appeals excluding Article 8 cases for entry clearance can be made. Table 2 shows that around 36 per cent of the 26,500 entry clearance appeals could be Article 8 cases, which would amount to around 9,500 cases.
- Table 3 sets out an estimation of the remaining appeal receipt volumes that would lose their right of appeal under the proposal assessed in this IA

Table 3: Appeal Receipt Volumes Excluding Article 8 for Entry Clearance and Human Rights for Managed Migration

2012/13	Appeal Volumes – will no longer have right of appeal	Appeal Volumes – that are expected to retain right of appeal
Managed Migration	20,700	9,800
Entry Clearance	17,000	9,500
Deport and others	1,800	0

¹ Source: MoJ Management Information

² Entry clearance total applications – (visitors application + PBS applications), Source HO - Table be_01_q: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/200382/before-entry2-q1-2013-tabs.ods

Total	39,500	19,300
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Source: HO Analysis, MoJ. Note: Numbers may not sum with other tables due to rounding

- It is assumed that, in the absence of any alternative evidence, around 39,500 appeals per annum would no longer arise under this policy. To note, this may be an overestimate as some applicants who lose their right of appeal may make alternative applications on the basis of article 8, asylum, humanitarian protection or EU free movement rights. In the absence of better information, the Home Office believes this is the best estimate of the reduction in appeals. However, we have also included some sensitivity analysis to show the impact of either lower or higher levels of appeals, and so this figure is in practice our best central estimate.
- The extent to which applicants may change the basis of their application to gain appeal rights following this policy change is not known. Legislation already allows the Home Office to minimise the impact of appeals arising as a consequence of such actions. In particular, where an asylum or human rights claim is clearly unfounded, the claim can be certified so that the appeal takes place only out-of-country. Only a small proportion of individuals whose claims are certified in this way exercise that out-of-country right of appeal. Where the claim is a repetition of an earlier human rights or asylum claim or if it could have been made earlier, the claim can be certified so that no right of appeal arises.
- As the policy change affects the ability to apply for an appeal, data on receipt numbers have been used. This is the number of appeals received by the courts.
- To calculate the volumes of receipts that go on to be determined at a hearing the percentage of disposals determined has been applied to the receipt volumes in Table 3. These percentages are set out in Table 4 below along side the resulting volumes. There are slight differences between the annual figures for receipts of appeal applications and case disposals due to some cases being received in a set year but not disposed until a later year.

Table 4: 2012/13 Cases Determined

	Percentage determined	Volume of appeal cases being heard	Percentage Allowed	Volume of appeals allowed
Managed Migration	77%	16,000	49%	7,800
Entry clearance	63%	10,700	50%	5,400
Deport and other	88%	1,600	32%	500
Total	N/A	28,300	N/A	13,700

Source HO Analysis, MoJ

- An internal Home Office review estimated that approximately 60 per cent of the volume of appeals allowed are due to case working errors. The Administrative Review process when set up is intended to resolve such errors.
- The current unit cost of appeals for HMCTS and the Home Office are presented below.

Table 5: Appeal Unit Costs

		Managed Migration	Entry Clearance	Deportation and other
Home Office Years 0-9	Fixed	£156	£131	£394
	Variable	£156	£131	£394
HMCTS Years 0-5	Variable	£431	£371	£431
	Fixed cashable	£215	£186	£215
	Fixed non-cashable	£215	£186	£215
HMCTS Years 5+	Variable	£569	£490	£569
	Fixed cashable	£146	£126	£146

	Fixed non-cashable	£146	£126	£146
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Source: HO, MoJ

OPTION 2 – Reform the rights of Appeal and introduce non suspensive appeals

Administrative Review

Part of this policy change relates to implementing an Administrative Review process. This is not a legislative change and therefore is not part of the Immigration Bill. The Administrative Review process is still in development and therefore the impacts of it cannot yet be fully quantified. The potential non-monetised impacts are discussed below and it is envisaged that this Impact Assessment (IA) will be updated as the policy of the Administrative Review process develops.

Non-suspensive appeals for Article 8 cases

Similarly to the Administrative Review process the exact nature of the policy for non suspensive appeals is still being developed. Therefore it has not been possible to monetise or quantify the impacts of the policy. The potential non-monetised impacts are discussed below and it is envisaged that this IA will be updated as the policy for non-suspensive appeals develops.

Impact on business

There are no direct impacts on business as a result of this policy proposal; the change in legislation directly impacts individuals and not businesses.

The implementation of an Administrative Review process would benefit some Tier 2 migrants that apply for an extension as in the absence of a right of appeal, Administrative Review of a refused extension application would be available where the refusal is challenged on the basis of case working error. A business that pays for their Tier 2 migrants' visas and subsequent appeal costs could expect redress of case working errors under the Administrative Review process. However, where a business bears the financial costs of a migrant's application and appeal it is as a consequence of their choice to do so; this policy is not implementing a direct regulation on business. Therefore, using BRE guidance, this is considered as a second order impact. These second order effects of a business having to re-hire due to a migrant losing an appeal have been considered in the impact assessment below.

Furthermore, there could be an impact on lawyers. However, as the current position is that a migrant is not required to use a lawyer to appeal, namely instructing a lawyer is the migrant's choice, the impact would be indirect. The familiarisation costs of this policy have no impact on lawyers who are required to undertake continuous professional development as a condition of their practising certificates and who maintain and update their legal knowledge as a matter of course in practising as a lawyer.

COSTS

Set up costs

Costs to Public sector – Non Monetised

Training and familiarisation – Home Office

There are likely to be set up and training costs for the Home Office to process Administrative Review cases. As the Administrative Review process remains under development, the nature and extent of these costs is not yet clear therefore these costs have not been monetised.

Training and Familiarisation – HMCTS

There are likely to be set up and training costs incurred by HMCTS. These costs relate to changes in case management systems and judicial training due to changes in the type of appeals being made.

Direct Ongoing Costs

Costs to the public sector – Monetised

Reduced income for HMCTS – HMCTS would see a reduction in income from appeal fees. An oral hearing is £140³ and a written hearing is £80⁴. Table 6 shows the weighted averages of these fees for each appeal category.

Table 6 Percentages of Oral and Paper Receipts for 2012/13

	Oral	Paper	Weighted fee
Managed Migration	83%	17%	£130
Entry Clearance	84%	16%	£130
Deport and Other	99%	1%	£139

Source: MoJ internal data

Using 2012/13 volumes it is estimated that there will be a reduction in appeals of about 39,500 per annum. Combining the receipt volumes in table 3 with the relevant weighted fees gives a cost of approximately £5m per year (£42m in present values (PV) over 10 years). This will be offset by expected savings in the cost of providing appeals. See below.

Costs to the public sector – Non monetised

Administrative Review – There will be a cost to the Home Office of processing the Administrative Review cases which it is intended will be covered by a cost recovery fee charged to migration applicants. Processing Administrative Reviews is therefore expected to be cost-neutral. It will involve Home Office staff reviewing cases therefore there is an opportunity cost of their time although the scale of this is not yet known.

Increase in Judicial Reviews – It is thought that the volume of judicial reviews may increase as a result of the policy changes. A judicial review is estimated to cost the Home Office between £1,500 and £2,000⁵ per review, this relates to average legal fees. There would also be adverse costs and damages to consider, as well as costs to MoJ but these are currently unknown. As volumes are unknown, it is not possible to quantify this impact.

Increased Air Fares for Home Office – For non-suspensive appeals, the Home Office could see an increase in air fare costs from situations where it has to remove failed applicants from the country and also where it subsequently has to fly back any migrants who are successful in their appeal. As the amount of appeals that will be subject to the non suspensive clause is as yet unknown this cost cannot be monetised.

Indirect ongoing costs

Cost to businesses/third sector – Non monetised

Businesses hiring Tier 2 (extension) migrants – The Administrative Review may not have the same scope of review as appeals although this has not yet been decided. This may mean some Tier 2

³ MoJ Fees guidance at <http://www.justice.gov.uk/downloads/tribunals/immigration-and-asylum/lower/online-fees-guidance.pdf>

⁴ MoJ Fees guidance at <http://www.justice.gov.uk/downloads/tribunals/immigration-and-asylum/lower/online-fees-guidance.pdf>

⁵ Home Office Parliamentary Question response - <http://www.theyworkforyou.com/wrans/?id=2011-06-23a.61401.h&s=%28%22judicial+review%22+AND+cost%29+department%3AHomeDepartment#g61401.q0>

applicants are denied leave to remain in the UK who would previously have been allowed to appeal. There may then be second order costs to business of having to re-hire. This second order impact cannot be monetised due to the lack of available data. For 2012/13 there were around 33,600 visa decisions⁶ for Tier 2 (extensions) main applicants, out of these just under 1,400 were refused⁷ (around 4 per cent). However, not all of these people will lodge an appeal; therefore the effect on businesses of removing appeal rights for Tier 2 extensions will be small. Furthermore, it is anticipated that the majority of those refusals would be within the scope of Administrative Review.

There may also be some effect on Tier 5 (short term workers) and Tier 1 (investors and entrepreneurs). This impact assessment will not consider the impact on them as per the objective function on page 5. Tiers 1 & 5 are not sponsored so if their application for extension was declined then the loss of appeal rights would not have a second order effect on any businesses but may however have a third order effect on the economy if they are an investor/entrepreneur. In practice, it is expected that these impacts will very rarely relate to an investor or entrepreneur.

Lawyers – Some migrants choose to use a lawyer when making an appeal, but this is not a requirement. As a result, there would be an indirect impact on lawyers whom migrants might have used for their appeal. Volumes are not known; therefore this second order impact cannot be monetised.

Third Sector – Education institutions would lose tuition fees from migrants who would no longer be able to appeal. Volumes of students who would no longer appeal due to this policy, i.e. those who would fail to qualify for the Administrative Review process are not known; therefore this indirect impact cannot be quantified. However, in 2012/13 there were around 98,800 visa decisions⁸ for Tier 4 (extensions) main applicants, of these just under 12,400 were refused⁹ (around 13 per cent). Given this small refusal rate, and the likelihood that most education establishments have waiting lists, meaning that places lost due to a refusal could be filled by someone else, the impact on the education sector of removed appeal rights is likely to be low.

BENEFITS

Direct Ongoing Benefits

Benefits to the public sector - Monetised

Reduced Home Office/Tribunal appeal costs – there will be a reduction in the volume of appeals which will bring savings to the Home Office and the HMCTS.

HMCTS estimate that around 50 per cent of this cost is variable over the first five years of the IA, followed by 66 per cent over the next five years as more resources are released. HO estimate that around 66 per cent of the costs are variable.

HMCTS estimate that 50 per cent of the cost is fixed over the first five years and 34 per cent fixed over the next five years. However, it is believed that only 50 per cent of this proportion can be classed as a cashable saving. The remaining 50 per cent is classed as an opportunity cost saving, in that the resource can be used for other cases but cannot be cashed.

⁶ HO – Table be_01_q: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/200386/extensions-q1-2013-tabs.ods

⁷ HO – Table be_01_q: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/200386/extensions-q1-2013-tabs.ods

⁸ HO – Table be_01_q: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/200386/extensions-q1-2013-tabs.ods

⁹ HO – Table be_01_q: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/200386/extensions-q1-2013-tabs.ods

Home Office estimate that around a third of the cost is a fixed cost, although resources may be reused both within the Home Office and HMCTS, in particular to increase the speed of throughput of appeals where there is a greater impact on the individual or the public (e.g. asylum, deportation or settlement). This will be reallocated to other areas of HO business.

The volume of cases heard relates to the determined appeal volumes from Table 4. These are 16,000 for managed migration, 10,700 for out of country and 1,600 for deportation and other are combined with the costs described above in Table 5. The calculation of this is set out over the ten year appraisal period in Annex A. This gives an annual saving of around £31m per year (£216m in PV over ten years¹⁰).

The benefits may be slightly overstated as it is not known how many receipts relate to humanitarian protection, human rights, or EU free movement rights.

Benefits to the public sector – Non Monetised

Reduced Home Office/Tribunal appeal costs – There may be reduced costs for both the Home Office and HMCTS of fewer appeals being taken to the Upper Tribunal. Volumes are currently unknown, therefore this impact cannot be quantified.

Reduced detention costs – For non-suspensive cases where the applicant appealing under Article 8 is in detention such as a foreign national offender there will be reduced detention costs. This is due to the fact that the individual would not be kept in the UK for their appeal but returned to their country of origin. As volumes likely to be affected by this proposal are not known, it has not been possible to monetise this impact.

Reduced appeal numbers – There may be a benefit of reduced appeal costs for the Home Office and HMCTS if making appeals non suspensive leads to a reduction in appeals lodged. However there is no indication of whether this will be the case or not at the current time.

Indirect ongoing benefits

Benefits to the public sector – Non Monetised

Decreased public sector costs - A more streamlined system will deliver faster removals of those who have leave to remain in the UK. Those subject to removal will no longer be able to delay their removal through unmeritorious appeals. This will benefit to public sector through savings in public services used by those delaying their removal. This has not been quantified as the volumes affected are unknown. It has been calculated that an individual who migrated could costs the public sector around £5,100 per head per year¹¹.

Benefits to the private sector – Non Monetised

Reduced time to decision – Cases should be dealt with more quickly under the Administrative Review process. Where there are Tier 2 migrants and there is an error in the application there will be an indirect benefit to the business employing the migrant of having the case resolved in a shorter time period. Currently the average time taken to clear an appeal tribunal for immigration and asylum is 20 weeks¹².

Summary of costs and benefits

A summary of the key monetised costs and benefits included in the NPV is set out below.

¹⁰ See table in Annex A

¹¹ http://www.legislation.gov.uk/ukxi/2013/749/pdfs/uksifia_20130749_en.pdf

¹² MoJ statistics, table 4.1, source:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/207807/court-stats-q1-ad-tables.xls

Table 7: Cost Benefit Analysis Summary

	Annual Average (£m)	10 yr impact (PV) (£m)
Costs		
Ongoing costs		
1. Administrative Review Costs	N/K	N/K
2. Reduced appeal income to HMCTS	£5	£42
Total costs	£5	£42
Benefits		
Ongoing Benefits		
1. Decrease in appeal costs		
Home Office	£9	£73
HMCTS	£22	£187
Total benefits	£31	£261
Net present value		£219

Source: HO Analysis

Notes: Numbers may not sum due to rounding

F. Risks & Sensitivity

OPTION 2

Increased appeals under remaining rights

There may be an increase in Article 8, asylum and human rights claims, and consequent appeals, as rights of appeal are removed from other routes. Due to lack of evidence this cannot be quantified. This will be mitigated by the fact that there is legislation in place to allow the Home Office to certify cases that are brought on unfounded grounds.

Sensitivity Analysis – Judicial Reviews (JR)

This section sets out a sensitivity analysis to look at possible JR volumes that could occur from the policy change. This is done by estimating the volume of appeals that were previously allowed, which will no longer have a right of appeal, estimating at the amount that may bring a JR and how many may be granted a JR.

Table 8: 2012/13 Cases Determined (as per Table 4)

	Volume of appeal cases being heard	Percentage Allowed	Volumes allowed
Managed Migration	16,000	49%	7,800
Entry clearance	10,700	50%	5,400
Deport and other	1,600	32%	500
Total	28,300	N/A	13,700

Source: HO Analysis, MoJ

An internal Home Office review suggests that approximately 60 per cent of the estimated 14,000 allowed appeals may be granted a review under the Administrative Review process due to case working errors. This leaves around an additional 5,600 potential cases that may launch a Judicial Review. Data from 2012 shows that around 8 per cent of Judicial Review applications are

granted¹³. It is not possible to predict how many of the estimated 5,600 cases will launch a Judicial Review. To give an idea of possible volumes, table 8 below sets out the amount of extra Judicial reviews on top of current levels that could result from the policy change. This is based on different take-up rates by the estimated 5,600 potential Judicial reviews and also takes into account possible variations in the amount of cases granted a Judicial Review. The table below sets out the scenario under different assumptions:

Table 9: Sensitivity Analysis on Additional Volumes Granted a JR

	Take-up Rate	Permission Granted	Volumes
Low	10%	6%	30
Low - Medium	25%	8%	100
Medium	50%	10%	280
High - Medium	75%	15%	630
High	90%	20%	1000

Source: HO Analysis

The table above shows the amount of additional JRs that could be potentially granted under different scenarios. For example, if the take-up rate was 75 per cent and permission granted 15 per cent, then the additional volumes of JR granted could be around 630.

Sensitivity Analysis - Volumes

Annex B sets out a sensitivity analysis around the volumes that lose their right of appeal. The table below shows what the costs and benefits could be under a low, central and high scenario. This analysis shows the sensitivity of the assumptions and is not an evidence based high/low net present value estimate.

Table 10: Sensitivities – Summary of Costs and Benefits

	Low Summary	Central Summary	High Summary
	10 yr impact (£m) PV	10 yr impact (£m) PV	10 yr impact (£m) PV
Costs			
<u>Ongoing costs</u>			
1. Administrative Review Costs	Unknown	Unknown	Unknown
2. Reduced appeal income to HMCTS	£36	£42	£49
Total costs	£36	£42	£49
Benefits			
<u>Ongoing Benefits</u>			
1. Decrease in appeal costs			
Home Office	£63	£73	£84
HMCTS	£163	£187	£218
Total benefits	£226	£261	£303
Net present value	£190	£219	£254

Source: HO Analysis

Notes: Numbers may not sum due to rounding

This sensitivity analysis shows that the NPV is sensitive to the changes in the volumes. However, even under a low scenario the estimated benefits are £190m (PV over 10 years), and it is unlikely that the non-monetised costs assessed in the IA will offset this benefit completely.

¹³ MoJ statistics, table 1.4: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/207807/court-stats-q1-ad-tables.xls

G. Enforcement

The changes to immigration rights of appeal will be clearly explained to affected parties, namely HM Courts Service, the legal profession and individual migrants. Where appeal rights no longer exist, an Administrative Review process will be available to remedy errors in decision-making. The availability and scope of this process and the means by which it can be accessed will be publicised.

In other respects, as this proposal does not impose regulation on business on individuals, the question of enforcement is not relevant.

H. Summary and Recommendations

The table below outlines the costs and benefits of the proposed changes.

Table 11: Costs and Benefits		
Option	Costs	Benefits
2	£42m (PV over 10 years)	£261m (PV over 10 years)
	<u>Non Monetised</u>	
	<ul style="list-style-type: none"> • There will be a cost to the Home Office of conducting Administrative Review that will be charged to the applicant on a cost recovery basis. • There may be an increase in judicial reviews which could cost the Home Office between £1,500 and £2,000 per review. • Non-suspensive appeals will lead to increased air fare costs to the Home Office. • Businesses who are employing Tier 2 to migrants may suffer an indirect cost if the migrant they employ can no longer appeal and as a result has to leave. (Indirect) 	<ul style="list-style-type: none"> • Reduced detention costs to the public sector due to appeals being made non-suspensive. • Appeal numbers may drop as they are made non-suspensive, reducing costs to the public sector. • Reduced time for appeal decisions under an Administrative Review process. (Indirect) • Cases are likely to be dealt with faster under the Administrative Review process, thereby benefiting businesses (indirectly) who are employing a migrant that is applying for a Tier 2 extension. • Swifter removals due to a quicker review process would mean decreased cost to public services (indirect).
<small>Source: Home Office Analysis</small>		

The preferred option is Option 2 because it has a net benefit of around £219m (PV over ten years) compared to the maintaining the status quo. It should be noted that this is an overestimate as the costs of the Administrative Review process and non-suspensive appeal rights are not known. However, it is highly likely that even with these costs included; Option 2 would generate a positive NPV.

I. Implementation

The Government plans to implement these changes by order after the immigration bill has received Royal Assent (expected on or after April 2014).

J. Monitoring and Evaluation

The effectiveness of the new regime will be monitored by the Home Office and HM Courts and Tribunals Service.

K. Feedback

Feedback and findings from monitoring will be incorporated into the post-implementation review of the policy to inform future policy decisions on appeal rights and processes.

Annex A Breakdown of Benefits

	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	10 Year Total	Total PV
1. Decrease in appeal costs	£16m	£32m	£305m	£261m								
Managed Migration	£10m	£19m	£178m	£152m								
Volumes assumed to appeal	16,000	16,000	16,000	16,000	16,000	16,000	16,000	16,000	16,000	16,000		
Appeal Costs												
Home Office - Fixed	£1.2m	£2.5m	£24m	£20m								
Home Office - Variable	£1.2m	£2.5m	£24m	£20m								
HMCTS - Fixed	£1.7m	£3.4m	£3.4m	£3.4m	£3.4m	£2.3m	£2.3m	£2.3m	£2.3m	£2.3m	£27m	£24m
HMCTS - Variable	£3.8m	£6.9m	£6.9m	£6.9m	£6.9m	£9.1m	£9.1m	£9.1m	£9.1m	£9.1m	£77m	£65m
HMCTS - Opportunity Costs	£1.7m	£3.4m	£3.4m	£3.4m	£3.4m	£2.3m	£2.3m	£2.3m	£2.3m	£2.3m	£27m	£24m
Entry Clearance	£5m	£11m	£102m	£87m								
Volumes assumed to appeal	10,700	10,700	10,700	10,700	10,700	10,700	10,700	10,700	10,700	10,700		
Appeal Costs												
Home Office - Fixed	£0.7m	£1.4m	£13m	£11m								
Home Office - Variable	£0.7m	£1.4m	£13m	£11m								
HMCTS - Fixed	£1.0m	£2.0m	£2.0m	£2.0m	£2.0m	£1.3m	£1.3m	£1.3m	£1.3m	£1.3m	£16m	£14m
HMCTS - Variable	£2.0m	£4.0m	£4.0m	£4.0m	£4.0m	£5.2m	£5.2m	£5.2m	£5.2m	£5.2m	£44m	£37m
HMCTS - Opportunity Costs	£1.0m	£2.0m	£2.0m	£2.0m	£2.0m	£1.3m	£1.3m	£1.3m	£1.3m	£1.3m	£16m	£14m
Deport and others	£1.3m	£2.7m	£25m	£22m								
Volumes assumed to appeal	16,000	16,000	16,000	16,000	16,000	16,000	16,000	16,000	16,000	16,000		
Appeal Costs												
Home Office - Fixed	£0.3m	£0.6m	£6m	£5m								
Home Office - Variable	£0.3m	£0.6m	£6m	£5m								
HMCTS - Fixed	£0.2m	£0.3m	£0.3m	£0.3m	£0.3m	£0.2m	£0.2m	£0.2m	£0.2m	£0.2m	£3m	£2m
HMCTS - Variable	£0.3m	£0.7m	£0.7m	£0.7m	£0.7m	£0.9m	£0.9m	£0.9m	£0.9m	£0.9m	£8m	£7m
HMCTS - Opportunity Costs	£0.2m	£0.3m	£0.3m	£0.3m	£0.3m	£0.2m	£0.2m	£0.2m	£0.2m	£0.2m	£3m	£2m

Source: HO Analysis

Notes: Numbers may not sum due to rounding

Annex B Sensitivity Analysis – Volumes

The IA makes an assumption about the proportion of cases that retain the right of appeal due to it being an Article 8 case. In addition, volumes of human rights, humanitarian protection and EU free movement rights are unknown. Given these uncertainties, a sensitivity analysis has been produced around the central NPV estimates.

Table B.1 Percentages excluded, and Resulting Volumes

Key Sensitivities	Low	Central	High
Percentages Excluded (under article 8, EU free movement cases or human rights grounds)			
Managed Migration	40%	32%	20%
Entry clearance	45%	36%	25%
Deportation and other	20%	0%	0%
Volumes	24,600	28,300	32,900
Managed Migration	14,000	16,000	18,800
Entry clearance	9,200	10,700	12,500
Deportation and other	1,300	1,600	1,600

Source: HO Analysis, Note: numbers may not sum due to rounding

The low case scenario looks at the impact of more cases being exempt than assumed, which implies lower volumes. Under this scenario it is assumed that around 40 per cent of managed migration, 45 per cent of entry clearance and 20 per cent of deportation and other would be permitted to make an appeal. Applying these to the categories gives a volume of 24,600 that would no longer be able to make an appeal. Therefore, with the low case scenario, the costs are likely to be around £36m (PV over 10 years), the benefits would be £226m (PV over 10 years) and the NPV would be £190m (over 10 years).

For the high case scenario, volumes are higher because fewer cases are exempt. Under this scenario it is assumed that around 20 per cent of managed migration and 40 per cent of entry clearance would be permitted to make an appeal. Applying these to the categories gives a volume of 32,900 that would no longer be able to make an appeal. Therefore, with the high case scenario, the costs are likely to be around £49m (PV over 10 years), the benefits would be £303m (PV over 10 years) and the NPV would be £254m (over 10 years).

It can be seen from the tables that the NPV is quite sensitive to changes in the volumes but that the estimated potential impact on the NPV is not likely to be large enough to alter the preferred option.

Table B.2 Sensitivities – Summary of Costs and Benefits

	Low Summary	Central Summary	High Summary
	10 yr impact (£m) PV	10 yr impact (£m) PV	10 yr impact (£m) PV
Costs			
<u>Ongoing costs</u>			
1. Administrative Review Costs	Unknown	Unknown	Unknown
2. Reduced appeal income to HMCTS	£36	£42	£49
Total costs	£36	£42	£49
Benefits			
<u>Ongoing Benefits</u>			
1. Decrease in appeal costs			
Home Office	£63	£73	£84
HMCTS	£163	£187	£218
Total benefits	£226	£261	£303
Net present value	£190	£219	£254

Source: HO Analysis

Notes: Numbers may not sum due to rounding