

Title: Prisons and Courts Bill: Consultation on Modernising Judicial Terms and Conditions

IA No: MoJ039/2016

RPC Reference No: N/A

Lead department or agency: Ministry of Justice

Other departments or agencies: Judicial Office

Impact Assessment (IA)

Date: 22/02/2017

Stage: Final

Source of intervention: Domestic

Type of measure: Primary Legislation

Contact for enquiries:
simon.quinn@justice.gsi.gov.uk

Summary: Intervention and Options

RPC Opinion: N/A

Cost of Preferred (or more likely) Option

Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2014 prices)	One-In, Three-Out?	Business Impact Target Status
N/A	N/A	N/A	Not in scope	Not in scope

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

The current system of leadership judges across all levels and throughout jurisdictions is varied in terms of tenure, pay, responsibilities and duties. This has led to a number of inconsistent practices which this proposal seeks to address. At present, some leadership roles are held on a fixed term basis whereas others are not. This can lead to limitations on the ability of the judiciary to ensure that they have leadership in place to best meet judicial need. In addition some leadership roles are rewarded by extra remuneration while others are not, and in many cases the current arrangements mean that an office holder's pay does not decrease correspondingly when their leadership post ends.

What are the policy objectives and the intended effects?

The legislation would allow for fixed terms of appointment for salaried judges undertaking leadership positions, and provide an uplift in pay for as long as they hold these additional responsibilities. It is expected that in providing for fixed term leadership positions, the opportunity to assume leadership responsibilities will arise on a more regular basis. This will help clarify the leadership structure and might also help a wider range of judges to develop their skills in leadership posts and gain the experience required to move into higher levels of the judiciary. The revised remuneration package for the duration of the post should also help ensure that talented judges are incentivised to apply for and carry out such roles.

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

The government has considered the following options:

- 0) Do nothing;
 - 1) Introduce the ability to recruit to leadership positions for a fixed term, with accompanying temporary remuneration;
- Options 1 is the preferred option to achieve the policy objectives outlined above.

Will the policy be reviewed? There is no plan to review the policy.

Does implementation go beyond minimum EU requirements?	N/A			
Are any of these organisations in scope?	Micro No	Small No	Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: N/A		Non-traded: N/A	

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

Signed by the responsible Minister



Date:

22/02/2017

Summary: Analysis & Evidence

Policy Option 1

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

FULL ECONOMIC ASSESSMENT

Price Base Year 2014/15	PV Base Year 2016/17	Time Period Years 10yrs	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: Unknown

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

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

The quantum of any monetised costs and benefits is dependent on the scope and size of uplift, and how this compares to current arrangements including judges who continue to receive additional remuneration even when leadership positions have ended. The Lord Chancellor has asked the Senior Salaries Review Body to consider this in its major review of judicial pay, which reports in summer 2018. Some analysis of potential costs and benefits is set out in Section E.

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

As above

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

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

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

It is anticipated that this policy would result in a greater turnover of judges in key leadership roles. This could increase diversity in these leadership positions because the higher turnover would present more opportunities for BAME and women to achieve such positions. This proposal would also clarify the circumstances in which judges would receive an additional allowance for their leadership responsibilities and for how long they should retain it.

Key assumptions/sensitivities/risks

If the size of the uplift is too small, it may dis-incentivise judges from taking on leadership roles.

Discount rate

0

BUSINESS ASSESSMENT (Option 1)

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

Evidence Base

A. Background

Court reform

1. The Government is investing over £1 billion to transform the courts and tribunals system. We will create a straightforward, efficient court system that works for everyone, so that citizens can have the sort of confidence in using the system that is already enjoyed by our excellent legal services sector. Our reforms will give special care to those who need it – reducing unnecessary stress for victims and witnesses, reducing the emotional turmoil experienced as a result of major life events such as criminal activity, death or divorce. We will also cement our reputation for global legal excellence and enhance the reputation of our independent judiciary abroad.
2. This measure is part of a wider legislative package that underpins the court reform programme and collectively contributes to benefits of £226 million per annum at steady state in 2023-24. While most of the measures in the Bill produce significant direct savings, some do not. However, the measures are interdependent and all contribute to wider, indirect savings by streamlining processes, enabling more flexibility in judicial deployment, digitalisation, effective deployment and utilisation of our staff and estates. In short, each measure is vital for us to deliver the reform programme and associated savings as planned.

The Provision of Judges Steering Group

3. In 2013, the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals established a Steering Group to look at the ways in which the judiciary is utilised and to formulate strategic proposals for their consideration and agreement. The scope of the Steering Group's work included particular consideration of "the terms and conditions of salaried and fee-paid judicial office holders, the promotion of diversity and the deployment of the judiciary within the modernised courts and tribunals."
4. The Steering Group explored several potential areas of reform that might achieve these aims. The final set of proposals, published in the *Modernising Judicial Terms & Conditions*¹ consultation in September 2016, were those that the Group considered and recommended should be prioritised during a time when the courts and tribunals system itself will be undergoing significant reform. These included this measure, as well as other non-legislative measures.
5. This Impact Assessment (IA) should therefore be read alongside the consultation on *Modernising Judicial Terms and Conditions* to understand the full context.

B. Policy Rationale and Objectives

6. The conventional economic rationales for government intervention are based on efficiency and equity arguments. The government may consider intervening if there are failures in the way markets operate (e.g., monopolies overcharging consumers) or where there are failures with existing government interventions (e.g., waste generated by misdirected rules). The proposed new interventions should avoid creating a further set of disproportionate costs and distortions. The government may also intervene for equity (fairness) and re-distributional reasons (e.g., to reallocate goods and services to the more needy groups in society).
7. The rationale for the options discussed in this IA is efficiency. The current system of leadership judges across all levels and throughout jurisdictions is varied in terms of tenure, pay, responsibilities and duties. This has led to a number of inconsistent practices which this proposal seeks to address. At present, some leadership roles are held on a fixed term basis whereas others are not. This can

¹ <https://consult.justice.gov.uk/digital-communications/modernising-judicial-terms-and-conditions/>

lead to limitations on the ability of the judiciary to ensure that they have leadership in place to best meet judicial need. In addition some leadership roles are rewarded by extra remuneration while others are not, and in many cases the current arrangements mean that an office holder's pay does not decrease correspondingly when their leadership post ends. For example, some senior circuit judges hold their post for five years before reverting back to a circuit judge, but still receive the senior circuit judge pay.

8. The associated policy objective is to allow for fixed terms of appointment for salaried judges undertaking leadership positions, and provide an uplift in pay for as long as they hold these additional responsibilities. It is expected that in providing for fixed term leadership positions, the opportunity to assume leadership responsibilities will arise on a more regular basis. This will help clarify the leadership structure and might also help a wider range of judges to develop their skills in leadership posts and gain the experience required to move into higher levels of the judiciary. The revised remuneration package for the duration of the post should also help ensure that talented judges are incentivised to apply for and carry out such roles.

C. Affected Stakeholder Groups, Organisations and Sectors

9. These changes would primarily affect individuals who hold a judicial leadership position and those wishing to apply for one in future. A list of the main groups and stakeholders who will be affected is shown below:
 - The judiciary, including salaried and fee-paid judicial office holders throughout the courts and tribunals in England and Wales
 - HM Courts and Tribunal Service (HMCTS) which is the part of the Ministry of Justice (MoJ) which is responsible for administering the courts and tribunals service
 - Wider society, including taxpayers and users of the courts and tribunals service.

D. Description of Options Considered

10. To meet the policy objectives, the following options are assessed in this IA:
 - **Option 0/Do nothing: The current salary arrangements for leadership judges would remain unchanged**
 - **Option 1: introduce the ability to appoint leadership positions for a fixed term, with accompanying temporary remuneration.**

Option 0 – Do nothing

11. Under this option the current situation would continue in which some leadership judges receive an uplifted pay regardless of how long their leadership position lasts. Others would continue to receive no uplift. Some leadership positions would continue to be held for a fixed term while others would not.

Option 1 - introduce the ability to appoint leadership positions for a fixed term, with accompanying temporary remuneration.

12. Though this measure would not affect remuneration of current or previous post holders, it would seek to change the system for future leadership judges.
13. Under this option, judges will be appointed to leadership positions for fixed terms. This would give greater clarity to office holders and the judiciary generally about how long an office holder was expected to fulfil a leadership post.

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

E. Cost and Benefit Analysis

16. This IA follows the procedures and criteria set out in the Impact Assessment Guidance and is consistent with the HM Treasury Green Book.
17. Where possible, this IA identifies both monetised and non-monetised impacts on individuals, groups and businesses in England and Wales with the aim of understanding what the overall impact on society might be from the proposals under consideration. IAs place a strong focus on the monetisation of costs and benefits. There are often, however, important impacts that cannot sensibly be monetised. These might be impacts on certain groups of society or some data privacy impacts, positive or negative. Impacts in this IA are therefore interpreted broadly, to include both monetisable and non-monetisable costs and benefits, with due weight given to those that are non-monetisable.
18. The costs and benefits of each proposal are compared to option 0, the do nothing or 'baseline' case. As the 'baseline' option is compared to itself, the costs and benefits are necessarily zero, as is its Net Present Value (NPV).
19. The annual costs and benefits are presented in steady state throughout this IA. All estimates, unless stated otherwise, are annualised figures in 2014-15 prices.

Option 1 - introduce the ability to recruit to leadership positions for a fixed term, with accompanying temporary remuneration.

20. This option would introduce a fixed term for leadership roles and provide a leadership allowance paid only while the leadership position is held. The Lord Chancellor has requested that this be considered by the Senior Salaries Review Body under their major review of judicial pay which is scheduled to report in summer 2018, so the size and scope of the uplift in pay will be determined following the recommendations of that review, and will form part of the wider package of judicial remuneration.

Costs of Option 1

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

Benefits of Option 1

HMCTS

22. As the leadership allowance would only be payable while the leadership role was held, there might be savings for HMCTS if they no longer had to pay the additional sum to judges who had relinquished the leadership role.

Benefits to wider society

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

Net impact of Option 1

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

F. Risk and Sensitivity Analysis

25. The details of this option – the timing of introduction, the size of the uplift and the length of fixed term that would apply – have yet to be decided. Furthermore, the extent of the implementation of these proposals is not known. Judicial leadership remains a judicial function, meaning the level of uptake would depend in part on judicial appetite.

26. There are some difficulties in predicting the exact effects of this policy given the extent to which third parties can influence it. For example, with regards to the level of remuneration leadership judges should receive for their role, it is anticipated that the Senior Salaries Review Body will have a view on this when they publish the recommendations of their major review in 2018. As we do not know what the eventual uplift will be for leadership responsibilities, there is a level of uncertainty around the financial impact this policy could have.

G. Wider Impacts

27. An equality statement covering all of the measures in the *Modernising Judicial Terms & Conditions* consultation was published alongside the consultation paper².

H. Enforcement and Implementation

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

I. Business Impact Target and One in Three out status

29. These proposals do not meet the definition of regulation under the Small Business, Enterprise and Employment Act 2015 and so are out of scope of the regulatory framework. The measure does not count toward the business impact target nor qualify for the One-In Three-Out burden reduction incentive.

² <https://consult.justice.gov.uk/digital-communications/modernising-judicial-terms-and-conditions/>